

## *Minute Action*

AGENDA ITEM: 12

**Date:** May 12, 2010

**Subject:** North Milliken Avenue/Union Pacific Railroad (UPRR) Grade Separation Project in the City of Ontario

- Recommendation:\***
1. Approve Cooperative Agreement No. R10195 with the City of Ontario for Construction of North Milliken Avenue/UPRR Grade Separation Project with SANBAG's contribution not to exceed \$45,812,000.
  2. Approve Purchase Order No. P10238 with the Union Pacific Railroad in an amount not to exceed \$12,175,622, which includes up to \$11,199,622 for track work; and up to \$566,000 for flagging work during construction of the North Milliken Avenue/UPRR Grade Separation project.
  3. Approve Purchase Order No. P10239 with Kinder Morgan in an amount not to exceed up to \$360,000 to for inspection work during construction of the North Milliken Avenue/UPRR Grade Separation project.
  4. Authorize the Executive Director to enter into purchase orders with two local businesses, each in an amount not to exceed \$50,000, for trans-loading services needed during construction of the North Milliken Avenue/UPRR Grade Separation project.
  5. Approve Professional Services Agreement No. C10184 with Nolte Associates, Inc. for construction management, construction surveying, materials testing and public outreach services for the North Milliken Avenue/UPRR Grade Separation Project in an amount not to exceed \$5,169,038.

\*

*Approved  
Board of Directors*

*Date:* \_\_\_\_\_

*Moved:*

*Second:*

*In Favor:*

*Opposed:*

*Abstained:*

*Witnessed:* \_\_\_\_\_

6. Approve budget authority for Task No. 88210000, North Milliken Avenue Grade Separation, in the amount of \$50,000 for the 2009/2010 fiscal year to fund staff's support costs and Contract No. C10184 for construction management services through June 2010.

***Background:***

The City of Ontario has completed the final Plans, Specifications and Estimate (PS&E) package for North Milliken Grade Separation Project. In November 2009 we were informed by the California Transportation Commission (CTC) in that anticipated allocation of TCRP funding for construction of the project would not be available until year 2016.

To allow this project to move forward, on January 20, 2010, the SANBAG Board approved a funding plan to reprogram \$45,089,000 of State Transportation Improvement Program (STIP) fund savings from the I-215 North construction project to the North Milliken Grade Separation Project in the City of Ontario. In addition, SANBAG agreed to provide \$723,000 in Measure I funds, for a total contribution of \$45,812,000 toward the construction phase of the project. The CTC approved the STIP funds at their April 2010 meeting.

**Recommendation (1)** - SANBAG staff has worked with the City of Ontario to prepare a construction Cooperative Agreement No. R10195 that identifies the roles of both agencies in funding and constructing the North Milliken Avenue Grade Separation project.

Total construction cost (including support costs) for the North Milliken Avenue Grade Separation project is estimated at \$63,000,000. Per the subject cooperative agreement, funding for construction will consist of an 80%-20% split between SANBAG and the City of Ontario, following any Public Utility Commission (PUC) and/or Union Pacific Railroad contributions to buy down the total project cost. Southern California Edison (SCE) Rule 20A contributions for costs of undergrounding of electrical transmission lines are to be considered part of the City's development related costs and will buy down the City's 20% share of project costs.

SANBAG's share of costs will be funded with State Transportation Improvement Program/Regional Improvement Program (STIP/RIP) funds in an amount up to \$45,089,000. SANBAG will also contribute up to \$723,000 in Measure I funds. The City of Ontario will contribute up to \$13,826,606 in development impact fees (DIF) and SCE's Rule 20A contribution for electric transmission line undergrounding is estimated at \$1,200,000. Union Pacific is expected to contribute up to \$2,160,000 for its share of project costs and the City has applied for up to \$5,000,000 in PUC Grant money for the project. Because SANBAG's

funding capacity is limited to \$45,812,000, the City will advance up to \$2,858,885 toward SANBAG's 80% share of costs. Any funds advanced by the City will be credited to the City's share of costs on a future project.

**Recommendation (2)** - Prior to SANBAG agreeing to provide construction administration for the project, the City of Ontario anticipated that it would administer the construction contract and entered into a Construction and Maintenance (C&M) agreement with UPRR. The C&M agreement requires the City to reimburse UPRR for the railroad's actual costs in building a shoofly track ("track costs") and providing flagging services in the amount of \$11,199,622 and \$566,000, respectively. After meeting with the City and SANBAG to discuss SANBAG's role in administering the construction phase of the project, UPRR determined that SANBAG could administer construction of the project as an agent of the City of Ontario under the existing C&M agreement. Staff requests approval of a purchase order with UPRR in an amount not to exceed \$11,765,622 for payment of UPRR's invoiced costs for the project. Following payment to UPRR, SANBAG will invoice the City of Ontario for reimbursement of their 20% share of costs in accordance with the terms of Cooperative Agreement No. R10195.

**Recommendation (3)** - The City of Ontario has negotiated terms of an agreement with Kinder Morgan for inspection services during construction activities near existing pipelines. The agreement requires the City to reimburse Kinder Morgan for the actual costs of pipeline inspection during construction up to an estimated amount of \$360,000. Again, SANBAG will act as the City's agent in administering the construction contract under the terms of the existing Kinder Morgan agreement. Staff requests approval of a purchase with Kinder Morgan in an amount not to exceed \$360,000 for payment of Kinder Morgan's invoiced costs for the project. Following payment to Kinder Morgan, SANBAG will invoice the City of Ontario for reimbursement of their 20% share of costs in accordance with the terms of Cooperative Agreement No. R10195.

**Recommendation (4)** -The City is currently in the process of negotiating trans-loading agreements with two businesses adjacent to the project that will temporarily lose rail service when existing industrial lead tracks are reconstructed. The businesses will transport freight via trucks to and from a trans-loading facility (similar to that operated by the Burlington Northern Santa Fe railroad and J.B. Hunt at the 3<sup>rd</sup> Street Depot). Staff requests the Board to authorize the Executive Director to enter into two separate purchase orders with the affected businesses, each in an amount not to exceed \$50,000 for payment of trans-loading costs during construction. Following payment to these businesses, SANBAG will

invoice the City of Ontario for reimbursement of their 20% share of costs in accordance with the terms of Cooperative Agreement No. R10195.

**Recommendation (5)** - In March 2010, SANBAG Board approved a new Task No. 882 for the North Milliken Avenue Grade Separation and ratified the Major Projects Committee approval to release a Request for Proposals (RFP) seeking a highly qualified consulting firm to provide construction management, surveying, materials testing and public outreach services for construction of the grade separation project. Staff received a total of nine (9) proposals from the following firms: AECOM, Simon Wong & Associates, Parsons-Brinckerhoff, Harris & Associates, Southstar Engineering, J.L. Patterson & Associates, Nolte Associates, Berg & Associates and TCM Group. SANBAG rejected a proposal from Hernandez, Kroone & Associates because it was submitted after the cutoff time specified in the RFP.

Staff assembled a selection panel consisting of members from the City of Ontario (2), Caltrans (1), San Bernardino County (1) and SANBAG staff (2). Following review of the nine proposals, five (5) firms were shortlisted to participate in interviews: AECOM, J.L. Patterson and Associates, Nolte Associates, Parsons-Brinckerhoff and Harris & Associates. Interviews were conducted on Tuesday, April 6<sup>th</sup>. The selection panel unanimously agreed that Nolte Associates was the most qualified team to provide the services requested in the RFP. Staff met with the Nolte team on Thursday, April 8<sup>th</sup> to begin negotiations on a professional services contract. Staff has reached an agreement with Nolte on a contract price not to exceed \$5,169,038, which includes an estimated fee of \$4,573,671, plus a 10% contingency of \$457,367 and an allowance of \$138,000 for office space and equipment over the approximate 28 month duration of the contract.

**Recommendation (6)** – In March 2010, SANBAG Board approved a new Task No. 882 for the North Milliken Avenue Grade Separation; however, a request for budget authority was deferred at that time pending approval of Cooperative Agreement No. R10195. Staff now requests \$50,000 in budget authority for Task 88210000 for the 2009/2010 Fiscal Year to fund staff's support costs and costs under consultant services contract No. C10184 through June 2010.

Recommendation 2, Purchase Order with Union Pacific Railroad, Recommendation 3, Purchase Order with Kinder Morgan, and Recommendation 4, purchase orders for trans-loading services, have been added since the Major Projects Committee recommended approval of this item. The services covered by these purchase orders were included in the background and the total construction cost. However, since the committee meeting it has been determined that the most effective way to track these expenditures is to issue separate purchase orders.

***Financial Impact:*** This item is not consistent with 2009/2010 Fiscal Year budget.

Budget authority in the amount of \$50,000 from Measure I funds is requested for Task No. 882 for the 2009/2010 Fiscal Year to fund staff support costs and the professional services contract for construction management services.

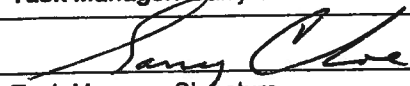
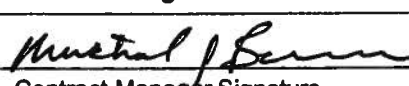

Construction funding identified in the construction cooperative agreement has been included in the draft Fiscal Year 2010/2011 budget.

***Reviewed By:*** This item was reviewed and unanimously recommended for approved by the Major Projects Committee on April 15, 2010. SANBAG Counsel has reviewed and approved the construction cooperative agreement and the professional services agreement as to form.

***Responsible Staff:*** Garry Cohoe, Director of Freeway Construction

SANBAG Contract No. R10195  
by and between  
San Bernardino County Transportation Authority  
and the City of Ontario  
for Construction of the North Milliken Avenue Grade Separation Project

FOR ACCOUNTING PURPOSES ONLY						
<input type="checkbox"/> Payable <input checked="" type="checkbox"/> Receivable	Vendor Contract # _____ Vendor ID _____	Retention: <input type="checkbox"/> Yes _____ % <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Original <input type="checkbox"/> Amendment			
Notes:						
Original Contract:      \$ <u>15,027,000</u>  Contingency / Allowance Amount      \$ <u>0</u>		Previous Amendments      \$ _____ Previous Amendments      \$ _____ Contingency / Allowance Total: Current Amendment:      \$ _____ Current Amendment Contingency / Allowance:      \$ _____				
Contingency Amount requires specific authorization by Task Manager prior to release.						
Contract TOTAL ►			\$ <u>15,027,000</u>			
* Funding sources remain as stated on this document unless and until amended by proper authority. Funding sources are those which are ultimately responsible for the expenditure.						
▼ Include funding allocation for the original contract or the amendment						
Main Task/ Project	Level 1	Level 2	Cost Code/ Object	Grant ID/ Supplement	Funding Sources/ Fund Type (Measure I, STP, CMAQ, etc.)	Amounts for Contract Total or Current Amndmnt Amt
882	650	000	52005	TBD	City of Ontario Funds	\$ 15,027,000
						\$ _____
Original Board Approved Contract Date:      5/12/10				Contract Start: 5/12/10		Contract End: 12/31/12
New Amend. Approval (Board) Date:      _____				Amend. Start: _____		Amend. End: _____
Allocate the <b>Total Contract Amount</b> or <b>Current Amendment</b> amount between <b>Approved Budget Authority</b> in the current year and <b>Future Fiscal Year(s) Unbudgeted Obligation</b> .						
Approved Budget Authority ►		Fiscal Year: \$ _____		Future Fiscal Year(s) – Unbudgeted Obligation ►		\$ _____
<input type="checkbox"/> Budget authority for this contract currently exists in Task No. _____ (C-Task may be used here.). <input checked="" type="checkbox"/> A budget amendment is required. A Budget Amendment Request is attached.						

CONTRACT MANAGEMENT			
Check all applicable boxes:			
<input checked="" type="checkbox"/> Intergovernmental	<input type="checkbox"/> Private	<input type="checkbox"/> Federal Funds	<input checked="" type="checkbox"/> State/Local Funds
<input type="checkbox"/> Disadvantaged Business Enterprise (DBE)	<input type="checkbox"/> Underutilized DBE (UDBE)		
Task Manager: Garry Cohoe		Contract Manager: Michael Barnum	
 Task Manager Signature	5/3/10 Date	 Contract Manager Signature	4/30/10 Date
 Chief Financial Officer Signature	5/18/10 Date		

**COOPERATIVE AGREEMENT No. R10195**

**BETWEEN  
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

**and**

**THE CITY OF ONTARIO**

**For**

**Construction of North Milliken Avenue/UPRR Alhambra Subdivision**

**Grade Separation Project**

THIS AGREEMENT is made and entered into on \_\_\_\_\_ day of \_\_\_\_\_ 2010, by and between the SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, hereinafter referred to as "AUTHORITY" and the CITY OF ONTARIO, hereinafter referred to as "CITY," and sometimes collectively hereinafter referred to as "PARTIES."

**WITNESSETH**

WHEREAS, the PARTIES desire to proceed with the construction, which includes construction management, construction administration, surveying and material testing, and undergrounding of electrical distribution lines (hereinafter referred to as the "CONSTRUCTION WORK") for the Milliken Avenue/UPRR Alhambra Subdivision Grade Separation Project (hereinafter referred to as the "PROJECT"); and

WHEREAS, the PROJECT will improve traffic operations in and around the PROJECT by constructing a bridge to carry the Union Pacific Railroad over Milliken Avenue; and,

WHEREAS, the PROJECT also includes improvements to existing streets, sewers, storm drains, water mains, traffic signals, undergrounding of electrical lines, and related work necessitated by the grade separation; and,

WHEREAS, CITY has requested that AUTHORITY provide construction management and administration of the PROJECT; and,

WHEREAS, AUTHORITY and CITY desire to define the terms and conditions and their respective roles and responsibilities during the construction of the PROJECT by entering into this Agreement.

NOW, THEREFORE, AUTHORITY and CITY agree to the following:

## SECTION I

### I. CITY AGREES:

1. To provide the PROJECT construction bid package - including the plans, special provisions, and engineer's estimate (PS&E) to AUTHORITY.
2. To secure all right-of-way (fee, permanent easements, railway Construction and Management agreement, trans-loading agreements, and/or temporary construction easements) necessary for the PROJECT.
3. To deposit with the AUTHORITY, within forty-five (45) days of AUTHORITY's award of construction contract for the PROJECT, \$1,000,000, which represents two (2) months of CITY's share of estimated average monthly CONSTRUCTION WORK Costs. The deposit will be credited towards the CITY's reimbursement as described by SECTION I, Paragraph 4, when the CITY's estimated share to complete the CONSTRUCTION WORK is less than the deposited amount.
4. To reimburse the AUTHORITY on a monthly basis, the CITY's twenty percent (20%) of the actual share of costs for CONSTRUCTION WORK up to a total amount of \$12,168,000 and thereafter, to advance AUTHORITY's 80% share of actual CONSTRUCTION WORK costs up to an amount of \$2,859,000 for a total contribution towards the costs of CONSTRUCTION WORK of not to exceed \$15,027,000 as identified in Attachment 1, attached hereto and incorporated herein by this reference. CITY will pay to AUTHORITY, the CITY's actual share of costs within thirty (30) days of receipt of a complete invoice.
5. To provide all City permits and waive City fees required to construct the PROJECT. The contractor(s) shall obtain and pay the fees for all other non-City permits required for the construction of the PROJECT.

## SECTION II

### II. AUTHORITY AGREES:

1. To request allocation of Regional Improvement Program (RIP) funding obligation through Caltrans Local Assistance and contribute up to \$45,089,000 of RIP funds plus up to \$723,000 in Measure I funds for a total contribution towards the costs of CONSTRUCTION WORK of not to exceed \$45,812,000 as identified in Attachment 1, attached hereto and incorporated herein by this reference.
2. To select and contract with consultant(s) for the construction management, construction surveying/staking, materials testing, and public outreach of the PROJECT.
3. To be the lead agency for the advertising, award, and administration (AAA) of the construction contract for the PROJECT. AUTHORITY will award a contract to the lowest responsible bidder, provided the bid is no more than \$43,683,000, which represents 110% of Engineer's Estimate.



4. Through its consultants, to administer and inspect all construction work for compliance with the PROJECT plans and specifications.
5. Subject to the prior written consent of Union Pacific Railroad Company, to assume those rights and obligations of the CITY necessary to construct the PROJECT under the existing NEW PUBLIC ROAD CROSSING UNDERPASS AGREEMENT, by and between Union Pacific Railroad Company ("UPRR") and the CITY, covering the Construction, Maintenance and Use of the New Milliken Avenue Underpass Grade Separation Crossing with Union Pacific Railroad (DOT. NO. 440-140R) (the "Underpass Agreement").
6. Subject to the prior written consent of Kinder Morgan, to assume the rights and obligations of the CITY under the CITY's agreement with Kinder Morgan for protection of pipelines during construction of the PROJECT over and within existing Kinder Morgan easements.
7. To conduct weekly PROJECT construction meetings between AUTHORITY and contractor; and CITY will attend, to the extent practical, those meetings and give priority to resolving PROJECT-related issues in a timely manner.
8. To receive monthly invoices from the contractor, construction management firm(s), and others for costs of CONSTRUCTION WORK performed to that date. AUTHORITY will verify that the invoices are true and correct and, once verified, will pay the invoices. Thereafter AUTHORITY will prepare and submit to the CITY, monthly invoices for reimbursement of CITY'S share of CONSTRUCTION WORK costs paid by AUTHORITY.
9. To be responsible for providing all information to the public regarding the PROJECT's construction in accordance with a mutually acceptable Public Outreach Program established for construction of PROJECT. AUTHORITY will provide the necessary information as needed to keep public informed of the status, progress, and closures.
10. To supply CITY with Mylar As-Built drawings including CAD files at the completion of PROJECT.

### SECTION III

#### III. IT IS MUTUALLY AGREED:

1. HM-1 is defined as hazardous material (including but not limited to hazardous waste) that requires removal and disposal pursuant to federal or state law, whether it is disturbed by PROJECT or not.

HM-2 is defined as hazardous material (including but not limited to hazardous waste) that may require removal and disposal pursuant to federal or state law, only if disturbed by PROJECT.

CITY, independent of PROJECT, is responsible for any HM-1 found within existing CITY right of way. CITY will undertake HM-1 management activities with minimum

impact to PROJECT schedule and will pay all costs associated with HM-1 management activities.

CITY has no responsibility for management activities or costs associated with HM-1 found outside the existing CITY right of way. In the event that any HM-1 is found within PROJECT limits, but outside existing CITY right of way. AUTHORITY will undertake, or cause to be undertaken, HM-1 management activities with minimum impact to PROJECT schedule, and all costs associated with HM-1 management activities will be a CONSTRUCTION WORK cost to be shared by the CITY and AUTHORITY in accordance with the terms of this agreement.

If HM-2 is found within the limits of PROJECT, AUTHORITY will be responsible for HM-2 management activities and any management activity cost associated with HM-2 will be a CONSTRUCTION WORK cost to be shared by the CITY and AUTHORITY in accordance with the terms of this agreement.

Management activities associated with either HM-1 or HM-2 include, without limitation, any necessary manifest requirements and designation of disposal facility.

2. All inspection fees charged by Kinder Morgan to verify compliance with the terms of the construction agreement will be considered CONSTRUCTION WORK costs to be shared by the CITY and AUTHORITY in accordance with the terms of this agreement.
3. All payments for trans-loading services provided during construction of PROJECT in accordance with the agreement(s) secured by the CITY will be considered CONSTRUCTION WORK costs to be shared by the CITY and AUTHORITY in accordance with the terms of this Agreement.
4. All payments made to the construction contractor(s) for obtaining all non-City permits required for the construction of the PROJECT will be considered CONSTRUCTION WORK costs to be shared by the CITY and AUTHORITY in accordance with the terms of this agreement.
5. All payments for the consultant contract work in providing construction management services, including surveying, materials testing and public outreach, will be a CONSTRUCTION WORK cost to be shared by the CITY and AUTHORITY in accordance with the terms of this agreement.
6. The PROJECT is funded by a combination of private, State, and local sources as further described in Attachment 1. AUTHORITY and CITY will cooperate in funding the CONSTRUCTION WORK, as set forth in Attachment 1, subject to the following:
  - a. Contributions to PROJECT funding by UPRR and/or the California Public Utilities Commission (CPUC) shall reduce the total PROJECT cost to be shared by AUTHORITY and CITY. Eighty percent (80%) of the remaining PROJECT cost after such reduction shall be allocated to AUTHORITY and twenty percent (20%) shall be allocated to CITY.

- b. Notwithstanding paragraph 6a, above, if the total of all CONSTRUCTION WORK costs for PROJECT exceed \$57,265,000, AUTHORITY will credit toward the CITY's development impact fee contribution on a future project, AUTHORITY's 80% share of the CONSTRUCTION WORK costs for PROJECT in excess of \$57,265,000 that are advanced by CITY, up to an amount of \$2,859,000. Any amount the total CONSTRUCTION WORK costs for PROJECT are less than \$57,265,000 will reduce the AUTHORITY's and CITY's shares of CONSTRUCTION WORK costs on the pro-rata basis described in paragraph 6a.
  - c. In the event the lowest responsible bid on the construction contract exceeds \$43,683,000, which represents 110% of the Engineer's Estimate, AUTHORITY and CITY will work together and determine the best course of action. Possible courses of action may include the re-bidding of the construction contract for PROJECT (possibly with modified scope), the awarding of the contract by AUTHORITY as bid, or other alternatives to be determined at the time. Whatever the course of action, AUTHORITY shall not be obligated to contract for the work unless a mutually agreed to solution is formulated.
  - d. The CITY's share of CONSTRUCTION WORK costs described in Section I, paragraph 4 will be partially offset by an amount equal to the CITY's Rule 20A contribution for costs of undergrounding the Southern California Edison (SCE) electric distribution line in advance of constructing the PROJECT. The amount of CITY's Rule 20A contribution that will partially offset of CITY's share of costs will be determined during the final accounting at the completion of the project and upon the CITY providing to AUTHORITY SCE statement(s) demonstrating the actual Rule 20A contribution for PROJECT.
- 7. All contract change orders for CONSTRUCTION WORK shall be approved by AUTHORITY. Claims from the contractor(s) will be resolved using AUTHORITY's procedures. AUTHORITY will consult with CITY prior to settling any claims, and CITY shall be responsible for funding CITY's pro-rata share of CONSTRUCTION WORK costs for all settled claims and change orders for the PROJECT.
  - 8. Except as otherwise specified in this Agreement, payment of CITY's share of costs for all CONSTRUCTION WORK will be by reimbursement to AUTHORITY from CITY in the manner described in Section I, Paragraph 4 of this Agreement
  - 9. Neither AUTHORITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, CITY shall fully defend, indemnify and save harmless AUTHORITY, its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) or damage to property occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement.

10. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by AUTHORITY under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, AUTHORITY shall fully defend, indemnify and save harmless CITY, its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) or damage to property occurring by reason of anything done or omitted to be done by AUTHORITY under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this Agreement.
11. This Agreement will be considered terminated upon completion of the PROJECT, and the fulfillment of all responsibilities and obligations of the PARTIES.
12. This Agreement is binding upon CITY and AUTHORITY and their successors and assigns. Except as otherwise provided herein, neither CITY nor AUTHORITY shall assign, sublet, or transfer its interest in this Agreement or any part thereof without the prior written consent of the other.
13. A final accounting at the completion of the PROJECT will determine the total contribution from both the AUTHORITY and the CITY.

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IN WITNESS THEREOF, The parties hereto have caused this Agreement to be executed by their respective officials, thereunto duly authorized.

**CITY OF ONTARIO**

**SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY**

\_\_\_\_\_  
Chris Hughes, City Manager

\_\_\_\_\_  
Paul M. Eaton ,  
President, AUTHORITY Board of Directors

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Approved as to Form:

\_\_\_\_\_  
Approved as to Form:

\_\_\_\_\_  
John Brown, City Attorney

\_\_\_\_\_  
Jean-Rene Basle,  
AUTHORITY Counsel

\_\_\_\_\_  
Attested By:

\_\_\_\_\_  
Mary E. Wirtes, City Clerk

# ATTACHMENT 1

## TABLE A— FUNDING SUMMARY

	SANBAG (x 1,000)	ONTARIO <sup>4</sup>		UPRR (x 1,000)	Total (x 1,000)
		DIF (x 1,000)	SCE Rule 20A (x 1,000)		
STIP/RIP <sup>1</sup>	\$ 45,089	\$ -	\$ -	\$ -	\$ 45,089
Measure I <sup>2</sup>	\$ 723	\$ -	\$ -	\$ -	\$ 723
Ontario Local Match (20%)	\$ -	\$ 10,968	\$ 1,200	\$ -	\$ 12,168
Ontario Local Advance	\$ -	\$ 2,859	\$ -	\$ -	\$ 2,859
Railroad Contribution <sup>3</sup>	\$ -	\$ -	\$ -	\$ 2,161	\$ 2,161
<b>Total</b>	<b>\$ 45,812</b>	<b>\$ 13,827</b>	<b>\$ 1,200</b>	<b>\$ 2,161</b>	<b>\$ 63,000</b>

<sup>1</sup> AUTHORITY will request allocation of \$45.089 million in State Transportation Improvement Program (STIP)/Regional Improvement Program (RIP) funds to apply towards AUTHORITY's share of CONSTRUCTION WORK.

<sup>2</sup> AUTHORITY will allocate \$723,000 of local Measure I Transportation Funds towards AUTHORITY's share of CONSTRUCTION WORK costs.

<sup>3</sup> Pursuant to the Underpass Agreement, UPRR will contribute \$2.161 million towards CONSTRUCTION WORK costs.

<sup>4</sup> CITY has applied for up to \$5.0 million in CPUC grant funding and will contribute any amounts awarded on the application to reduce costs of CONSTRUCTION WORK.

## TABLE B--CONSTRUCTION WORK COST ESTIMATE

Engineer's Estimate	\$	39,711,158.00
10% Contingency	+	\$ 3,971,116.00
Subtotal Base Const.	=	\$ 43,682,274.00
UPRR Flagging	+	\$ 566,000.00
UPRR Track Work	+	\$ 11,199,622.00
Kinder Morgan Inspection	+	\$ 360,000.00
Subtotal Const.	=	\$ 55,807,896.00
Construction Mgt. (12% of Base)	+	\$ 5,241,873.00
Total Const.	=	\$ 61,049,769.00
SANBAG Administrative Costs	+	\$ 750,000.00
SCE Relocation	+	\$ 1,200,000.00
<b>Total Project Cost</b>	<b>=</b>	<b>\$ 62,999,769.00</b>

**PURCHASE ORDER REQUEST**

**NOTE:** Do not use a purchase order for construction projects, roadwork, purchase or lease of real property, and employment contracts.

**Short Description of PO** to be included in monthly procurement report.  
(Required) Use up to a maximum of 27 characters to provide a short description.

N. Milliken railroad costs

**VENDOR:** Union Pacific Railroad

**Vendor ID** UPR1

**ADDRESS:** 2015 South Willow Avenue, Bloomington, CA 92316

**PHONE:** 909-879-6264

☐ **Process payment from this PO Request – invoice is attached.**

**PO End Date (required):** 12/31/2012

**PO # (if released for RFP/RFQ):** P10238

Item Description	Order Qty	Task #	Cost Code	Amount
Track Work	LS	88210000	5554	\$ 11,199,622.00
Flagging	LS	88210000	5554	\$ 566,000.00
Effective Date: June 30, 2010				\$
Shipping/Handling				\$
<b>TOTAL</b>				<b>\$ 11,765,622.000</b>



Attach any special instructions that are to be noted on the purchase order. This purchase order is approved under the authority of Cooperative Agreement C10195 between SANBAG and the City of Ontario for payment of services under the City's New Public Road Crossing Underpass Agreement with UPRR (UPRR Folder 2533-12).

**Please answer the following questions regarding the selection process:**

Was the County Pre-Approved Vendor List used? ☒ No ☐ Yes

Was an informal competitive bid process done? ☒ No ☐ Yes – complete Informal Bid Process Form (Page 2).

Is this a sole source purchase order? ☐ No ☒ Yes - If so, why? UPRR is the only provider of the requested services.

Requested By: Michael Barnum	Date 05/05/10
P.O. Manager's Signature 	Date 5/5/10
Approved by Task Manager (Signature) 	5/5/10

Filename: Agreements\PO\_\_\_\_\_

## PURCHASE ORDER REQUEST

**NOTE:** Do not use a purchase order for construction projects, roadwork, purchase or lease of real property, and employment contracts.

**Short Description of PO** to be included in monthly procurement report.  
(Required) Use up to a maximum of 27 characters to provide a short description.

N. Milliken Inspection costs

**VENDOR:** Kinder Morgan **Vendor ID** SFPPLP

**ADDRESS:** 1100 Town & Country Road, Orange, CA 92868

**PHONE:** 714-560-4400

☐ **Process payment from this PO Request – invoice is attached.**

**PO End Date (required):** 12/31/2012 **PO # (if released for RFP/RFQ):** P10239

Item Description	Order Qty	Task #	Cost Code	Amount
Inspection services of Kinder Morgan facilities during construction of N. Milliken Grade Separation Project	LS	88210000	5554	\$ 360,000.00
				\$
<b>Effective Date: June 30, 2010</b>				\$
Shipping/Handling				\$
<b>TOTAL</b>				<b>\$ 360,000.00</b>

Attach any special instructions that are to be noted on the purchase order. This purchase order is approved under the authority of Cooperative Agreement C10195 between SANBAG and the City of Ontario for payment of services under the City's Agreement with Kinder Morgan.

**Please answer the following questions regarding the selection process:**

Was the County Pre-Approved Vendor List used? ☒ No ☐ Yes

Was an informal competitive bid process done? ☒ No ☐ Yes – complete Informal Bid Process Form (Page 2).

Is this a sole source purchase order? ☐ No ☒ Yes - If so, why? Kinder Morgan is the only provider of the requested services.

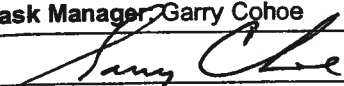
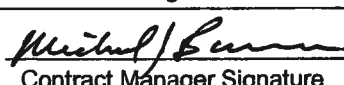

Requested By: Michael Barnum	Date 05/05/10
P.O. Manager's Signature	Date 5/5/10
Approved by Task Manager (Signature)	5/5/10
Filename: Agreements\PO _____	



SANBAG Contract No. **C10184**  
by and between San Bernardino County Transportation Authority  
and Nolte Associates, Inc.  
for Construction Management Services for the North Milliken Avenue Grade Separation Project

FOR ACCOUNTING PURPOSES ONLY						
<input checked="" type="checkbox"/> Payable	Vendor Contract # _____	Retention:	<input checked="" type="checkbox"/> Original			
<input type="checkbox"/> Receivable	Vendor ID _____	<input type="checkbox"/> Yes _____ % <input checked="" type="checkbox"/> No	<input type="checkbox"/> Amendment			
Notes:						
<b>Original Contract:</b>		<b>\$ 4,573,671</b>	<b>Previous Amendments</b>		<b>\$ _____</b>	
			<b>Previous Amendments</b>		<b>\$ _____</b>	
			<b>Contingency / Allowance Total:</b>			
<b>Contingency / Allowance Amount</b>		<b>\$ 595,367</b>	<b>Current Amendment:</b>		<b>\$ _____</b>	
			<b>Current Amendment Contingency / Allowance:</b>		<b>\$ _____</b>	
Contingency Amount requires specific authorization by Task Manager prior to release.						
<b>Contract TOTAL ►</b>					<b>\$ 5,169,038</b>	
* Funding sources remain as stated on this document unless and until amended by proper authority. Funding sources are those which are ultimately responsible for the expenditure.						
▼ Include funding allocation for the original contract or the amendment						
Main Task/Project	Level 1	Level 2	Cost Code/Object	Grant ID/Supplement	Funding Sources/ Fund Type (Measure I, STP, CMAQ, etc.)	Amounts for Contract Total or Current Amndmnt Amt
882	650	000	53700	21203	STIP/RIP	\$ 4,095,230
882	650	000	53700	TBD	City of Ontario Funds	\$ 1,033,808
882	650	000	53700	99043	Measure I (2010-2040)	\$ 40,000
Original Board Approved Contract Date:				5/12/10	Contract Start: 5/12/10	Contract End: 12/31/12
New Amend. Approval (Board) Date:				_____	Amend. Start: _____	Amend. End: _____
Allocate the Total Contract Amount or Current Amendment amount between Approved Budget Authority in the current year and Future Fiscal Year(s) Unbudgeted Obligation.						
<b>Approved Budget Authority ►</b>		Fiscal Year: <u>09/10</u>		<b>Future Fiscal Year(s) – Unbudgeted Obligation ►</b>		<b>\$ 5,129,038</b>
		\$ 40,000				
<input type="checkbox"/> Budget authority for this contract currently exists in Task No. _____ (C-Task may be used here.).						
<input checked="" type="checkbox"/> A budget amendment is required. A Budget Amendment Request is attached.						

CONTRACT MANAGEMENT	
<b>Check all applicable boxes:</b>	
<input checked="" type="checkbox"/> Intergovernmental	<input checked="" type="checkbox"/> Private
<input type="checkbox"/> Disadvantaged Business Enterprise (DBE)	<input type="checkbox"/> Underutilized DBE (UDBE)
<input type="checkbox"/> Federal Funds	<input checked="" type="checkbox"/> State/Local Funds

<b>Task Manager:</b> Garry Cohoe  Task Manager Signature	<b>Contract Manager:</b> Michael Barnum  Contract Manager Signature
 Chief Financial Officer Signature	5/3/10 Date
5/3/10 Date	4/30/10 Date

**CONTRACT NO: 10184**

**EFFECTIVE DATE: 5/12/2010.**

**by and between**

**San Bernardino Associated Governments/San Bernardino  
County Transportation Authority**

**And**

**Nolte Associates, Inc.**

**To**

**Provide Construction Management, Construction Surveying and  
Materials Testing Services**

**For**

**North Milliken Avenue Grade Separation Project**

**In the City of Ontario**

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## CONTRACT

### FOR

This Contract, entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2010, by the firm of Nolte Associates, Inc. (hereinafter called CONSULTANT) whose address is:

73-185 Highway 111, Suite A  
Palm Desert, CA 92260

and San Bernardino Associated Governments/San Bernardino County Transportation Authority (hereinafter called AUTHORITY) whose address is:

1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor  
San Bernardino, California 92410-1715

Whereas AUTHORITY desires CONSULTANT to perform certain technical services as hereinafter described and CONSULTANT desires to do so for the compensation and in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, the parties hereto agree as follows:

#### **Article 1      Description of Services**

CONSULTANT agrees to perform Services set forth in Attachment "A", Scope of Services, which is incorporated herein by reference, related to Construction of a rail grade separation along Milliken Avenue at the UPRR crossing in the City of Ontario, (Project), in accordance with high professional engineering, land surveying and materials testing standards which are generally accepted in the State of California, in accordance with the terms and conditions expressed herein and in the sequence, time, and manner defined therein. The word "Services," as used herein, includes without limitation, the performance, fulfillment and discharge by CONSULTANT of all obligations, duties, tasks, and services imposed upon or assumed by CONSULTANT hereunder; and the Services performed hereunder shall be completed to the satisfaction of AUTHORITY, with their satisfaction being based on prevailing engineering standards.

#### **Article 2      Performance Schedule**

- 2.1      The Period of Performance by CONSULTANT under this Contract shall commence on May 12, 2010 and shall continue in effect through December 31, 2012 or until otherwise terminated or canceled as hereinafter directed, or unless extended as hereinafter provided.

### **Article 3      Contract Price and Cost Principles**

- 3.1      Full compensation to CONSULTANT for full and complete performance of Services, compliance with all the terms and conditions of this contract, payment by CONSULTANT of all obligations incurred in, or application to, CONSULTANT'S performance of Services, and for which CONSULTANT shall furnish all personnel, facilities, equipment, materials, supplies, and services (except as may be explicitly set forth in this Contract as furnished by AUTHORITY), the total compensation to CONSULTANT shall not exceed the amounts set forth in 3.2 below.
- 3.2      The total cost shall not exceed five-million-one-hundred-sixty-nine-thousand, thirty-eight dollars (\$5,169,038), which includes a contingency of (four-hundred-fifty-seven-thousand, three-hundred-sixty-seven dollars (\$457,367) and an allowance of one-hundred-thirty-eight-thousand dollars (\$138,000) for office rental, office furniture, and office equipment needed to manage the construction of the North Milliken Grade Separation Project. Services to be provided under terms of this contract are to be provided on an as needed basis and compensated for as set forth in Attachment "B" which is incorporated herein by reference. Utilization of the contingency is not permitted unless directed in writing by AUTHORITY Project Manager. CONSULTANT'S fee for services is included in the total estimated contract cost and shall be a specific rate of compensation contract, as agreed upon, and noted in Attachment "B".
- 3.3      CONSULTANT'S overhead rates will be fixed, as agreed upon in Attachment "B" for the duration. The fixed overhead rate will not be subject to adjustment. Any percentage increase over the direct labor rate in Attachment "B" is not permitted without prior authorization from AUTHORITY.
- 3.4      Not used.
- 3.5      The cost principles set forth in Part 31, Contract Cost Principles and Procedures, in Title 48, Federal Acquisition Regulations System of the Code of Federal Regulations (CFR) as constituted on the effective date of this Contract shall be utilized to determine allowableness of costs under this Contract and may be modified from time to time by amendment of the Contract.
  - 3.5.1      The CONSULTANT agrees to comply with Federal Department of Transportation procedures in accordance with 49 CFR, Part 18, Uniform

**Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.**

3.5.2 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowed under 48 CFR, Part 31, Contract Cost Principles and Procedures, or 49 CFR, part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments shall be repaid by CONSULTANT to AUTHORITY.

3.5.3 Any subcontract, entered into as a result of this Contract shall contain all of the provisions of this Section 3.5.

3.6 Any services provided by the CONSULTANT not specifically covered by the Scope of Services (Attachment "A") shall not be compensated without prior written authorization from AUTHORITY. It shall be CONSULTANT'S responsibility to recognize and notify AUTHORITY when services not covered by the Scope of Services have been requested or are required. All changes and/or modifications to the Scope of Services shall be made in accordance with Article 12, Changes.

**Article 4 Availability of Funds**

This Contract is awarded on the contingency of availability of funds. The obligation of AUTHORITY is conditioned upon the availability of funds which are allocated and available for the payment of such an obligation. If funds are not allocated and available for the continuance of Services performed by CONSULTANT, Services directly or indirectly involved may be suspended or terminated by AUTHORITY at the end of the period for which funds are available. When AUTHORITY becomes aware that any portion of Services which will or may be affected by a shortage of funds, it will immediately so notify CONSULTANT. Nothing herein shall relieve AUTHORITY from its obligation to compensate CONSULTANT for Services performed pursuant to this Contract. No penalty shall accrue to AUTHORITY in the event this provision is exercised.

**Article 5 Taxes, Duties, Fees**

Except to the extent expressly provided otherwise elsewhere in this Contract, CONSULTANT shall pay when due, and the compensations set forth in "Article 3" shall be inclusive of all a) local, municipal, state, and federal sales and use taxes, b) excise taxes, c) taxes on personal property owned by CONSULTANT, and d) all other governmental fees and taxes or charges of whatever nature applicable to CONSULTANT to enable it to conduct business.

## **Article 6      Invoicing and Payments (Final Payment)**

- 6.1      The compensation of CONSULTANT as provided herein shall be payable in 4 week billing period payments, forty-five (45) calendar days after receipt by AUTHORITY of an invoice prepared in accordance with instructions below. Payment shall not be construed to be an acceptance of Services.
- 6.2      CONSULTANT shall prepare all invoices in a form satisfactory to and approved by AUTHORITY and it shall be accompanied by documentation supporting each element of measurement and/or cost. Each invoice will be for a four week billing period and will be marked with AUTHORITY'S project name, contract number and task order number. Invoices shall be submitted within fifteen (15) calendar says for the period covered by the invoice. Invoices shall include request for payment for Services (including additional Services authorized by AUTHORITY) completed by CONSULTANT during each billing period. Any invoice submitted which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to CONSULTANT. Any costs incurred by CONSULTANT in connection with the resubmission of a proper invoice shall be at CONSULTANT'S sole expense.
- 6.3      CONSULTANT shall furnish evidence, satisfactory to AUTHORITY, that all labor and materials furnished and equipment used during all periods prior to the period covered by any invoice have been paid in full. AUTHORITY shall not be obligated to make payments to CONSULTANT until CONSULTANT furnishes such evidence. Upon furnishing such evidence, satisfactory to AUTHORITY, AUTHORITY shall pay CONSULTANT the full amount of the invoice less disputed amounts.
- 6.4      CONSULTANT shall include a statement and release with each invoice, satisfactory to AUTHORITY, that CONSULTANT has fully performed the Services invoiced pursuant to this Contract for the period covered and that all claims of CONSULTANT and its subcontractors for Services during the period will be satisfied upon the making of such payment. AUTHORITY shall not be obligated to make payments to CONSULTANT until CONSULTANT furnishes such statement and release.
- 6.5      CONSULTANT shall forfeit the fixed fee portion of the progress payment for any billing period that CONSULTANT fails to submit an invoice within sixty (60) calendar days after the cutoff date for the billing period.
- 6.6      Appearance at Hearings – If and when required by AUTHORITY, CONSULTANT shall render assistance at hearings as may be necessary for the performance of the services.

## **Article 7      Documentation and Right of Audit**

- 7.1      CONSULTANT shall keep and maintain all books, papers, records, accounting records including but not limited to all direct and indirect costs allocated to Services, files, accounts, reports, cost proposals with backup data, and all other material relating to Services. Consultant shall upon request, make all such materials available to AUTHORITY or its designee at any reasonable time during the term of the contract and for three (3) years from the date of final payment to CONSULTANT, for auditing, inspection and copying. CONSULTANT shall insert in each of its subcontracts the above requirement.
- 7.2      The Cost Proposal for this Project is subject to a post award audit. After any post award audit recommendations are received the Cost Proposal shall be adjusted by the CONSULTANT and approved by the Contract Manager to conform to the audit recommendations. The CONSULTANT agrees that individual items of cost identified in the audit report may be incorporated into the Agreement (Project Contract) at AUTHORITY'S sole discretion. Refusal by the CONSULTANT to incorporate the audit or post award recommendations will be considered a breach of the Agreement terms and cause for termination of the Contract.

## **Article 8      Responsibility of the Engineer**

- 8.1      The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all deliverables and other services furnished by the CONSULTANT under terms of this Contract.
- 8.2      In addition to any other requirements of this Contract or duties and obligations imposed on CONSULTANT by law, the CONSULTANT shall, as an integral part of its services, employ quality control procedures that identify potential risks and uncertainties related to scope, schedule, cost, quality and safety of the Project and the services performed by CONSULTANT within the areas of CONSULTANT services and expertise. Risks that may be encountered include, but are not limited to, soil conditions, constructability, factors of safety, impact on adjacent properties, public safety, and environmental considerations. At any time during performance of the contracted Scope of Services, should the CONSULTANT observe, encounter, or identify any unusual circumstances or uncertainties which could pose potential risk and uncertainties, CONSULTANT shall immediately document such matters and notify AUTHORITY of said circumstances and related concerns. CONSULTANT shall also similarly notify AUTHORITY in regard to the possibility of any natural catastrophe, potential failure, or any situation that exceeds environmental, design, and/or construction assumptions



and could precipitate a failure. Notifications under this paragraph shall be specific, clear and timely, and in a form which will enable AUTHORITY to understand and evaluate the magnitude and effect of the risk and uncertainties involved.

**Article 9      Reporting Requirements/Deliverables**

All Reports and deliverables shall be submitted in accordance with Attachment "A", Scope of Services.

**Article 10     Permits and Licenses**

CONSULTANT shall (without additional compensation) keep current all governmental permits, certificates and licenses (including professional licenses) necessary for CONSULTANT to perform Services.

**Article 11     Technical Direction**

11.1    Performance of Services under this Contract shall be subject to the technical direction of the AUTHORITY Director of Freeway Construction, or his designee, as identified in Attachment "A", Scope of Services, attached to this Contract. The AUTHORITY Director of Freeway Construction will identify his designee, in writing to CONSULTANT, with the notice to proceed and subsequently with any changes during the contract period. The term "Technical Direction" is defined to include, without limitation:

11.1.1    Directions to the CONSULTANT which redirect the contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Scope of Services.

11.1.2    Provision of written information to the CONSULTANT which assists in the interpretation of drawings, reports, or technical portions of Service description.

11.1.3    Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the CONSULTANT to AUTHORITY or Caltrans under the Contract.

11.2    Technical direction must be within the Scope of Services in the Contract. The AUTHORITY Director of Freeway Construction or designee does not have the authority to, and may not, issue any technical direction which:

- 11.2.1 Constitutes an assignment of additional Services outside the Scope of Services;
  - 11.2.2 Constitutes a change as defined in the Contract clause entitled "Changes";
  - 11.2.3 In any manner causes an increase or decrease in the Contract's estimated cost or price or the time required for contract performance;
  - 11.2.4 Changes any of the expressed terms, conditions or specifications of the Contract; or
  - 11.2.5 Interferes with the CONSULTANT'S right to perform the terms and conditions of the Contract.
  - 11.2.6 A failure of the CONSULTANT and AUTHORITY Contract Manager to agree that the technical direction is within the scope of the Contract, or a failure to agree upon the Contract action to be taken with respect thereto shall be subject to the provisions of Article 30, Disputes.
- 11.3 All technical directions shall be issued in writing by the AUTHORITY Contract Manager or his designee.
- 11.4 The CONSULTANT shall proceed promptly with the performance of technical directions duly issued by the AUTHORITY Contract Manager or his designee, in the manner prescribed by this article and within his authority under the provisions of this clause. If, in the opinion of the CONSULTANT, any instruction or direction by the AUTHORITY Contract Manager or his designee, falls within one of the categories defined in 11.2.1 through 11.2.5 above, the CONSULTANT shall not proceed but shall notify the Contract Manager in writing within five (5) working days after receipt of any such instruction or direction and shall request the Contract Manager to modify the contract accordingly. Upon receiving the notification from the CONSULTANT, the Contract Manager shall:
- 11.4.1 Advise the CONSULTANT in writing within thirty (30) days after receipt of the CONSULTANT'S letter that the technical direction is or is not within the scope of Article 12, Changes;
  - 11.4.2 Advise the CONSULTANT within a reasonable time that AUTHORITY will or will not issue a written change order.

## **Article 12      Changes**

- 12.1    The Services shall be subject to changes by additions, deletions, or revisions thereto by AUTHORITY. CONSULTANT will be advised of any such changes by written notification from AUTHORITY describing the change.
- 12.2    Promptly after such written notification of change is given to CONSULTANT by AUTHORITY, CONSULTANT and AUTHORITY will attempt to negotiate a mutually agreeable change in compensation or time of performance and amend the Contract accordingly.

## **Article 13      Federal and State Mandatory Provisions**

### **13.1    Equal Employment Opportunity/Nondiscrimination**

- 13.1.1 Compliance with Regulations. The CONSULTANT shall comply with all Federal and State Equal Employment/nondiscrimination regulations ("Regulations") including all Regulations which are incorporated in this Contract.
- 13.1.2 Nondiscrimination. The CONSULTANT, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, national origin, religion, age or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Title 49 of the Federal Code of Regulations, Section 21.5, including employment practices when the agreement covers a program set forth in Appendix B of 49 CFR 21.
- 13.1.3 Solicitations for Sub-agreements including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligation under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- 13.1.4 Information and Reports. The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to the CONSULTANT'S books, records, accounts, other sources of information and its facilities as may be determined by AUTHORITY

to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to AUTHORITY, as appropriate, and shall set forth what efforts the CONSULTANT has made to obtain the information.

13.1.5 Sanctions for Noncompliance. In the event of the CONSULTANT'S noncompliance with the nondiscrimination provisions of this Contract, AUTHORITY shall impose such agreement sanctions as it may determine to be appropriate, including, but not limited to:

(a) Withholding of payments to the CONSULTANT under the Contract until the CONSULTANT complies; and/or

(b) Cancellation, termination or suspension of the Contract, in whole or in part.

13.1.6 The CONSULTANT shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers representative of the CONSULTANT's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

13.1.7 The CONSULTANT shall comply with all provisions of Executive Order No 11246 as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR, Part 60) and shall permit access to its books, records, and accounts by AUTHORITY and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

13.1.8 In the event of the CONSULTANT's noncompliance with the Equal Opportunity clause of this Contract or any of the said rules, Regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and the CONSULTANT may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR, Part 60).

- 13.1.9 The CONSULTANT shall include the provisions of paragraphs (13.1.1) through (13.1.8) of this Article in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR, Part 60), so that such provisions will be binding upon each subcontract or vendor. The CONSULTANT shall take such action with respect to any subcontract or purchase order as AUTHORITY may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by AUTHORITY, the CONSULTANT may request AUTHORITY to enter into such litigation to protect the interests of AUTHORITY.

**13.2 Handicapped Workers**

- 13.2.1 The CONSULTANT will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The CONSULTANT agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

**Article 14 Conflict of Interest**

- 14.1 The CONSULTANT agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The CONSULTANT further agrees that in the performance of this Agreement, no person having any such interest shall be employed.
- 14.2 No portion of the funds received by the CONSULTANT under this Agreement shall be used for political activity or to further the election or defeat of any candidate for public office.

## **Article 15     Key Personnel**

15.1     The personnel specified in 15.2 below are considered to be essential to Services being performed hereunder. Prior to diverting any of the specified individuals to other projects, or reallocation of tasks and hours of Services which are the responsibility of key personnel to other personnel, the CONSULTANT shall notify AUTHORITY reasonably in advance and shall submit justifications (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the Project. Diversion or reallocation of key personnel shall be subject to written approval by AUTHORITY. AUTHORITY also reserves the right to approve proposed substitutions for key personnel. In the event that AUTHORITY and CONSULTANT cannot agree as to the substitute of key personnel, AUTHORITY shall be entitled to terminate this Agreement.

15.2     Key Personnel are:

Steve Hiatt, P.E., Project Manager  
Scott Walker, P.E., Resident Engineer and Structures Representative

## **Article 16     Representations**

CONSULTANT agrees with AUTHORITY that services supplied by CONSULTANT in performance of this Contract shall be supplied by personnel who are careful, skilled, experienced and competent in their respective trades or professions. CONSULTANT agrees that he is supplying professional services, findings, and/or recommendations in the performance of this Contract and agrees with AUTHORITY that the same shall conform to high professional and engineering and environmental principles and standards which are generally accepted in the State of California.

## **Article 17     Proprietary Rights/Confidentiality**

17.1     If, as a part of the Contract, CONSULTANT is required to produce materials, documents data, or information ("Products"), then CONSULTANT, if requested by AUTHORITY, shall deliver to AUTHORITY the original of all such Products which shall become the property of AUTHORITY.

17.2     All materials, documents, data or information obtained from AUTHORITY's data files or any AUTHORITY medium furnished to CONSULTANT in the performance of this Contract will at all times remain the property of AUTHORITY. Such data or information may not be used or copied for direct or indirect use outside of this Project by CONSULTANT without the express written consent of AUTHORITY.

- 17.3 Except as reasonably necessary for the performance of Services, CONSULTANT and its employees and agents shall hold in confidence the materials and information referred to in this Article 17, PROPRIETARY RIGHTS/CONFIDENTIALITY, which are produced by CONSULTANT for AUTHORITY in the performance and completion of CONSULTANT'S Services under the Contract, until released in writing by AUTHORITY, except to the extent such materials and information become a part of public domain information through no fault of CONSULTANT, or its employees or agents.
- 17.4 CONSULTANT shall not use AUTHORITY'S name or photographs of the Project in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of AUTHORITY.
- 17.5 All press releases relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by AUTHORITY unless otherwise agreed to by CONSULTANT and AUTHORITY.
- 17.6 CONSULTANT agrees that it, and its employees, agents, and subcontractors will hold confidential and not divulge to third parties without the prior written consent of AUTHORITY, any information obtained by CONSULTANT from or through AUTHORITY in connection with CONSULTANT's performance of this Contract, unless (a) the information was known to CONSULTANT prior to obtaining same from AUTHORITY pursuant to a prior contract; or (b) the information was at the time of disclosure to CONSULTANT, or thereafter becomes part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONSULTANT or its employees, agents, or subcontractors, or (c) the information was obtained by CONSULTANT from a third party who did not receive the same, directly or indirectly, from AUTHORITY and who had, to CONSULTANT'S knowledge and belief, the right to disclose the same.

## **Article 18      Terminations**

- 18.1 Termination for Convenience. AUTHORITY shall have the right at any time, with or without cause, to terminate further performance of Services by written notice to CONSULTANT specifying the date of termination. On the date of such termination stated in said notice, CONSULTANT shall discontinue performance of Services and shall preserve work in progress and completed work ("Work"), pending AUTHORITY'S instruction, and shall turn over such Work in accordance with AUTHORITY's instructions.

- 18.1.1 CONSULTANT shall deliver to AUTHORITY, in accordance with AUTHORITY'S instructions, all Products prepared by CONSULTANT or its subcontracts or furnished to CONSULTANT by AUTHORITY. Upon such delivery, CONSULTANT may then invoice AUTHORITY for payment in accordance with the terms hereof.
- 18.1.2 If CONSULTANT has fully and completely performed all obligations under this Contract up to the date of termination, CONSULTANT shall be entitled to receive from AUTHORITY as complete and full settlement for such termination a pro rata share of the contract cost and a pro rata share of any fixed fee, for such Services satisfactorily executed to the date of termination.
- 18.1.3 CONSULTANT shall be entitled to receive the actual cost incurred by CONSULTANT to return CONSULTANT's field tools and equipment, if any, to it or its suppliers' premises, or to turn over Work in progress and Products in accordance with AUTHORITY's instructions plus the actual cost necessarily incurred in effecting the termination.
- 18.2 Termination for Cause. In the event CONSULTANT shall file a petition in bankruptcy, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy shall be filed against CONSULTANT or a receiver shall be appointed on account of its solvency, or if CONSULTANT shall default in the performance of any express obligation to be performed by it under this Contract and shall fail to immediately correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice thereof, AUTHORITY may, without prejudice to any other rights or remedies AUTHORITY may have, (a) hold in abeyance further payments to CONSULTANT; (b) stop any services of CONSULTANT or its subcontractors related to such failure until such failure is remedied; and/or (c) terminate this Contract by written notice to CONSULTANT specifying the date of termination. In the event of such termination by AUTHORITY, AUTHORITY may take possession of the Products and finish Services by whatever method AUTHORITY may deem expedient. A waiver by AUTHORITY of one default of CONSULTANT shall not be considered to be a waiver of any subsequent default of CONSULTANT, nor be deemed to waive, amend, or modify any term of this Contract.
- 18.2.1 In the event of termination CONSULTANT shall deliver to AUTHORITY all finished and unfinished Products prepared by CONSULTANT or its subcontractors or furnished to CONSULTANT by AUTHORITY.



- 18.3 All claims for compensation or reimbursement of costs under any of the foregoing provisions shall be supported by documentation submitted to AUTHORITY, satisfactory in form and content to AUTHORITY and verified by AUTHORITY. In no event shall CONSULTANT be entitled to any prospective profits or any damages because of such termination.
- 18.4 The Authority's Director of Freeway Construction shall have the full authority and discretion to exercise Authority's rights under this Article 18, Terminations.

#### **Article 19 Stop Work Orders**

Upon failure of CONSULTANT or its subcontractors to comply with any of the requirements of this Contract, AUTHORITY shall have the authority to stop any Services of CONSULTANT or its subcontractors affected by such failure until such failure is remedied or to terminate this Contract in accordance with Article 18, Termination.

#### **Article 20 Claims**

AUTHORITY shall not be bound to any adjustments in the Contract amount or scheduled time for CONSULTANT's claim unless expressly agreed to by AUTHORITY in writing and any such adjustments in the Contract amount so agreed to in writing shall be paid to CONSULTANT by AUTHORITY. No claim hereunder by CONSULTANT shall be allowed if asserted after final payments under this Contract.

#### **Article 21 Insurance**

In order to accomplish the indemnification herein provided for, but without limiting the indemnification, CONSULTANT shall secure and maintain throughout the term of the contract the following types of insurance with limits as shown:

- 21.1 Professional Liability Insurance coverage in an amount not less than \$1,000,000, per claim and \$2,000,000 in the aggregate. CONSULTANT shall secure and maintain this insurance or "tail" coverage provided throughout the term of this contract and for a minimum of three (3) years after contract completion.
- 21.2 Workers' Compensation Insurance or state-approved self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employers Liability with \$250,000 limits, covering all persons providing services on behalf of CONSULTANT and all risks to such persons under this Agreement.

- 21.3 Comprehensive General Liability Insurance or Commercial General Liability Insurance, including coverage for Premises and Operations, Contractual Liability, Personal Injury Liability, Broad-Form Property Damage and Independent Contractors' Liability, in an amount of not less than \$1,000,000 per occurrence, combined single limit, and \$3,000,000 in the aggregate written on an occurrence form.

For products and completed operations a \$2,000,000 aggregate shall be provided.

- 21.4 Comprehensive Automobile Liability Coverage, including owned, non-owned and hired automobiles, in an amount of not less than \$1,000,000 per occurrence, combined single limit, and in the aggregate written on an occurrence form.

- 21.5 Proof of Coverage. CONSULTANT shall immediately furnish certificates of insurance to AUTHORITY evidencing the insurance coverage required above, prior to the commencement of performance of services hereunder, and such certificates shall include San Bernardino Associated Governments/San Bernardino County Transportation Authority and Parsons Transportation Group (Project administration consultant) as additional insured on Comprehensive General Liability Insurance or Commercial General Liability Insurance and auto insurance. The certificates shall provide that such insurance shall not be terminated without thirty (30) days written notice to AUTHORITY, and CONSULTANT shall maintain such insurance from the time CONSULTANT commences performance of services hereunder until the completion of such Services.

- 21.6 Additional Insured. All policies, except for Workers' Compensation and Professional Liability policies, shall contain endorsements naming AUTHORITY and its officers, employees, agents, and volunteers as additional insureds with respect to liabilities arising out to the performance of Services hereunder. The additional insured endorsements shall not limit the scope of coverage for AUTHORITY to vicarious liability but shall allow coverage for AUTHORITY to the full extent provided by the policy.

- 21.7 Waiver of Subrogation Rights. The CONSULTANT shall require the carriers of required coverages to waive all rights of subrogation against AUTHORITY, its officers, employees, agents, volunteers, contractors, and subcontractors. All general auto liability insurance coverage provided shall not prohibit CONSULTANT or CONSULTANT'S employees or agents from waiving the right of subrogation prior to a loss or claim. CONSULTANT hereby waives all rights of subrogation against AUTHORITY.

- 21.8 All policies required herein are to be primary and non-contributory with any insurance carried or administered by AUTHORITY.
- 21.9 Insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII".
- 21.10 The AUTHORITY'S contract with its general contractor for each Project is to require such contractor to obtain a Builder's Risk or Course of Construction Insurance, insuring on an "All-Risks" basis with a limit of not less than the full insurable replacement cost of the Project subject to deductible amounts as selected by Authority, and covering the Project and all materials and equipment to be incorporated therein, including property in transit or elsewhere and insuring the interests of AUTHORITY, CONSULTANT and its related entities, contractors and subcontractors of all tiers. The construction contract shall require that such insurance be primary, and shall include coverage for physical damage resulting from the Services and shall include an insurer's waiver of subrogation or right of recourse in favor of each party insured hereunder. Furthermore, the construction contract shall require that such insurance shall remain in effect until the applicable Project is completed and accepted by the AUTHORITY. The CONSULTANT, in its role as Project Manager, shall ensure that the requirements of this section are met.

## **Article 22 Indemnity**

CONSULTANT represents and maintains that it is skilled in the professional calling necessary to perform the Services, and its duties and obligations, as contained herein, required to fully and adequately complete the Project. AUTHORITY expressly relies upon CONSULTANT's representations regarding its skills and knowledge. CONSULTANT shall perform the Services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

CONSULTANT agrees to indemnify, hold harmless, and defend AUTHORITY and their officers, employees (past and present), agents, and representatives from and against:

- 22.1 Any claim, cause of action, liability, loss, cost or expense arising from infringement or improper appropriation or use by AUTHORITY of trade secrets, proprietary information, know-how, copyright rights or inventions, arising out of the use of methods, processes, designs, information, or other items furnished or communicated to AUTHORITY by CONSULTANT in connection with performance of Services; and

- 22.2 Any claim, cause of action, liability, loss, cost or expense, which arises out of or is alleged to arise out of the negligent, wrongful acts, errors or omissions or willful misconduct of CONSULTANT or its subcontractors, employees, or agents, in the performance of Services, and includes any and all expenses, including attorneys' fees, incurred by AUTHORITY for legal action to enforce CONSULTANT'S indemnification obligations hereunder.

## **Article 23 Damages due to Errors and Omissions**

- 23.1 Architect-Engineer Consultants shall be responsible for the professional quality, technical accuracy, and coordination of all services required under this Agreement. A CONSULTANT may be liable for AUTHORITY costs resulting from errors or deficiencies in designs furnished under its Agreement.
- 23.2 When a modification to a construction contract is required because of an error or deficiency in the services provided under this Agreement, the contracting officer (with the advice of technical personnel and legal counsel) shall consider the extent to which the CONSULTANT may be reasonably liable.
- 23.3 AUTHORITY'S contracting officer shall enforce the liability and collect the amount due, if the recoverable cost will exceed the administrative cost involved or is otherwise in the AUTHORITY'S interest. The contracting officer shall include in the Agreement file a written statement of the reasons for the decision to recover or not recover the costs from the CONSULTANT.

## **Article 24 Ownership of Drawings and Data**

All drawings, specifications reports and other data developed by CONSULTANT under this agreement shall become the property of AUTHORITY when prepared, whether delivered to AUTHORITY or not.

## **Article 25 Subcontracts**

- 25.1 CONSULTANT shall not subcontract performance of all or any portion of Services under this Contract, excepting subcontractors listed in the CONSULTANT'S proposal, without first notifying AUTHORITY of the intended subcontracting and obtaining AUTHORITY'S approval in writing of the subcontracting and the subcontractor. The definition of subcontractor and the requirements for subcontractors hereunder shall include all lower-tier subcontracts.

- 25.2 CONSULTANT agrees that any and all subcontractors of CONSULTANT will comply with the terms of this Contract applicable to the portion of Services performed by them. If requested by AUTHORITY, CONSULTANT shall furnish AUTHORITY a copy of the proposed subcontract for AUTHORITY'S approval of the terms and conditions thereof and shall not execute such subcontract until AUTHORITY has approved such terms and conditions. AUTHORITY approval shall not be unreasonably withheld.
- 25.3 Approval by AUTHORITY of any services to be subcontracted and the subcontractor to perform said Services will not relieve CONSULTANT of any responsibility or liability in regard to the acceptable and complete performance of said Services.
- 25.4 Any substitution of subcontractors must be approved in writing by AUTHORITY'S Contract Manager.

**Article 26 Inspection and Access**

AUTHORITY shall at all times have access during normal business hours to CONSULTANT's operations and products wherever they are in preparation or progress, and CONSULTANT shall provide sufficient, safe, and proper facilities for such access and inspection thereof. Inspection or lack of inspection by AUTHORITY shall not be deemed to be a waiver of any of their rights to require CONSULTANT to comply with the Contract or to subsequently reject unsatisfactory services or products.

**Article 27 Independent Contractor**

CONSULTANT is and shall be at all times an independent contractor. Accordingly, all Services provided by CONSULTANT shall be done and performed by CONSULTANT under the sole supervision, direction and control of CONSULTANT. AUTHORITY shall rely on CONSULTANT for results only, and shall have no right at any time to direct or supervise CONSULTANT or CONSULTANT's employees in the performance of Services or as to the manner, means and methods by which Services are performed. All workers furnished by CONSULTANT pursuant to this Contract, and all representatives of CONSULTANT, shall be and remain the employees or agents of CONSULTANT or of CONSULTANT's subcontractor(s) at all times, and shall not at any time or for any purpose whatsoever be considered employees or agents of AUTHORITY.

**Article 28 Precedence**

- 28.1 The Contract documents consist of these General Terms and Conditions and Attachment "A", Scope of Services, Attachment "B", Billing Rate Schedule, CONSULTANT's Proposal and AUTHORITY's Request for Proposals are

incorporated herein by reference.

**28.2 The following order of precedence shall apply:**

- 28.2.1 This Contract, its General Terms and Conditions, and Attachments
- 28.2.2 CONSULTANT's Proposal
- 28.2.3 AUTHORITY's Request for Proposals

**28.3 In the event of an express conflict between the documents listed in Article 28.2, or between any other documents which are a part of the Contract, CONSULTANT shall notify AUTHORITY immediately and shall comply with AUTHORITY's resolution of the conflict.**

**Article 29 Communications and Notices**

**29.1 Any and all notices permitted or required to be given hereunder shall be deemed duly given (a) upon actual delivery, if delivery is personally made; or (b) upon delivery into the United States Mail if delivery is by postage paid certified mail (return receipt requested), fax or private courier. Each such notice shall be sent to the respective party at the address indicated below or to any other address as the respective parties may designate from time to time by a notice given in accordance with this Article. A change in address may be made by notifying the other party in writing.**

**For CONSULTANT:**

Name: Nolte Associates, Inc.  
Address: 73-185 Highway 111, Suite A  
Palm Desert, CA 92260  
Attn: Steve Hiatt, P.E., Project Manager  
Phone: (760)341-3101  
Fax: (760)341-5999

**For AUTHORITY:**

Name: San Bernardino Associated Governments  
Address: 1170 W. Third Street, 2<sup>nd</sup> Floor  
San Bernardino, California 92410  
Attn: Mr. Garry Cohoe  
Phone: (909) 884-8276  
Fax: (909) 885-4407

**28.2 All communications pursuant to or in connection with this Contract shall be marked with AUTHORITY's contract and job numbers.**

## **Article 30     Disputes**

- 30.1     In the event any dispute arises between the parties hereto under or in connection with this Contract (including but not limited to disputes over payments, reimbursements, costs, expenses, services to be performed, Scope of Services and/or time of performance), the dispute shall be decided by the Contract Manager of AUTHORITY or his duly authorized representative within thirty (30) calendar days after notice thereof in writing which shall include a particular statement of the grounds of the dispute. If CONSULTANT does not agree with the decision, then CONSULTANT shall have thirty (30) calendar days after receipt of the decision in which to file a written appeal thereto with the Executive Director of AUTHORITY. If the Executive Director fails to resolve the dispute in a manner acceptable to CONSULTANT, then such appeal shall be decided by a court of competent jurisdiction.
- 30.2     During resolution of the dispute, CONSULTANT shall proceed with performance of this Contract with due diligence.

## **Article 31     Gratuities**

CONSULTANT, its employees, agents, or representatives shall not offer or give to an officer, official, or employee of AUTHORITY, gifts, entertainment, payments, loans, or other gratuities to influence the award of a contract or obtain favorable treatment under a contract.

## **Article 32     Review and Acceptance**

All Services performed by CONSULTANT shall be subject to periodic review and approval by the representatives of AUTHORITY at any and all places where such performance may be carried on. Failure of AUTHORITY to make such review, or to discover defective Work, shall not prejudice the rights of AUTHORITY at the time of final acceptance. All Services performed by CONSULTANT shall be subject to periodic and final review and acceptance by AUTHORITY upon completion of all Services.

## **Article 33     Safety**

CONSULTANT shall comply strictly with all local, municipal, state, and federal safety and health laws, orders and regulations applicable to CONSULTANT'S operations in the performance of Services hereunder.

**Article 34      Assignment**

CONSULTANT shall not assign this Contract wholly or in Part, voluntarily, by operation of law, or otherwise without first obtaining the written consent of AUTHORITY. Subject to the foregoing, the provisions of this Contract shall extend to the benefit of and be binding upon the successors and assigns of the parties hereto.

**Article 35      Amendments**

This Contract may only be changed by an amendment duly executed by CONSULTANT and AUTHORITY except, that changes to the Contract to implement administrative changes such as approved changes in key personnel may be made by administrative amendment signed by CONSULTANT and AUTHORITY's Contracts Manager or other duly authorized representative.

**Article 36      Governing Law and Venue**

This Contract shall be subject to the law and jurisdiction of the State of California. The parties acknowledge and agree that this agreement was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this agreement will be the Central District of San Bernardino County. Each party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this agreement is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Central District of San Bernardino County.

**Article 37      Prevailing Wages**

The CONSULTANT is alerted to the requirements of California Labor Code Section 1770 et seq. and agrees to defend, indemnify, and hold harmless AUTHORITY and its officers, employees, consultant, and agents from any claim or liability including, without limitation, attorney's fees, arising from any failure or alleged failure to comply with the California Labor Code Section 1770 et seq.

**Article 38      Contingent Fee**

The CONSULTANT warrants, by execution of this Contract, that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a Commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the CONSULTANT for the purpose of securing business. For breach or violation of this warranty, AUTHORITY has the right to annul this Contract without liability, pay only for the value of Services actually performed, or in its discretion, to deduct from the Contract price or consideration, or



otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**Article 39      Location of Performance**  
**Not used.**

**Article 40      Entire Document**

40.1    This Contract and its attachments constitute the sole and only agreement governing Services and supersedes any prior understandings, written or oral, between the parties respecting the within subject matter. All previous proposals, offers, and other communications, written or oral, relative to this Contract, are superseded except to the extent that they have been incorporated into this Contract.

40.2    No agent, employee or representative of AUTHORITY has any authority to bind AUTHORITY to any affirmation, representation or warranty outside of, or in conflict with, the stated terms of this Contract, and CONSULTANT hereby stipulates that it has not relied, and will not rely, on same.

40.3    As this Contract was jointly prepared by both parties, the language in all parts of this Contract will be construed, in all cases, according to its fair meaning, and not for or against either party.

**Article 41      Attorney's Fees**

If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under Article 22, Indemnity.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day and year below written, but effective as of the day and year first set forth above.

**Nolte Associates, Inc.**

By: \_\_\_\_\_  
NAME  
TITLE, COMPANY

Date: \_\_\_\_\_

**San Bernardino Associated Governments**

By: \_\_\_\_\_  
Paul M. Eaton  
President, AUTHORITY Board  
of Directors

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Jean-Rene Basle  
AUTHORITY Counsel

**ATTACHMENT “A”**

**Scope of Services**

**By and between**

**San Bernardino Associated Governments/  
San Bernardino County Transportation Authority**

**And**

**Nolte Associates, Inc.**

**To**

**Provide Construction Management, Material Testing and  
Construction Survey Services**

**For**

**North Milliken Avenue Grade Separation Project**

**Within the City of Ontario**

**Contract No. 10184**

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A. DESCRIPTION OF SERVICES

The San Bernardino Associated Governments (SANBAG) will utilize the services of CONSULTANT to support the construction activities as described below. The scope of services is for the North Milliken Avenue/Union Pacific Railroad (UPRR) Alhambra Line Grade Separation Project which is anticipated to go out to bid in Fall 2010. CONSULTANT will provide construction management, materials testing, and construction surveying for the projects.

North Milliken Avenue/UPRR Grade Separation Project

The North Milliken Ave./UPRR Grade Separation Project proposes to replace the existing at-grade crossing by constructing a 170-foot long, two span, steel plate girder underpass at Milliken Avenue between Airport Drive and Guasti Road in the City of Ontario. The project proposes to elevate UPRR tracks approximately 24' above the existing grade crossing and the major project feature will be the construction of the new underpass and approximately 6000 linear feet of embankment fill with gravity-type retaining systems along UPRR using T-WALL® precast concrete units which are proprietary to the Neel Company of Springfield, VA.

Other proposed improvements include widening and reconstruction of Milliken Avenue between Airport Drive and Guasti Road, construction of curb and gutter, sidewalks, raised median islands, street lighting, traffic signal modifications at the intersections with Airport Drive and Guasti Road, traffic signing and striping, and landscaping.

Major utility relocations, including overhead transmission and distribution electrical lines, will be performed separately by the City of Ontario prior to the start of construction on the grade separation project. Construction management and coordination of these utility relocations are not included the scope of services under this Request for Proposals (RFP).

Milliken Avenue will remain open to traffic during construction, except for one short term (16 hour) closure when traffic will be detoured around the project site via Haven Avenue, Fourth Street and Airport Drive. The proposed underpass will span six through lanes of traffic on Milliken Avenue (plus two turning lanes at Guasti Road) and carry two (one existing and one future) UPRR tracks. The construction is expected to be completed in approximately 24 months using five separate construction stages.

The North Milliken/UPRR Grade Separation as described by the plans and specifications, shall include construction of roadways, bridges, drainage facilities, and gravity retaining walls. CONSULTANT shall provide qualified construction management and inspection, materials testing and construction surveying personnel to perform a wide variety of construction management, support and contract administration duties as outlined in this Scope of Services for the Project.

The SANBAG Contract Manager for this contract will be:

Mr. Garry Cohoe  
Director of Freeway Construction

SANBAG has selected Parsons Transportation Group (Parsons) as Program Manager for the Measure I Valley Major Projects. In addition to the overall SANBAG/Parsons Program Management staff, SANBAG also employs a full-time Construction Manager to coordinate all

construction activities within the Measure I Valley Major Projects program. The CONSULTANT shall report to and receive direction from SANBAG through the Contract Manager, or his designees. The SANBAG Construction Manager is responsible for coordination of all SANBAG construction activities and for coordinating the efforts of the entire construction team. The SANBAG Construction Manager will be the main contact and primary source of information between SANBAG, UPRR, City of Ontario outside agencies, supporting consultants and the public for the construction projects.

**B. PERFORMANCE REQUIREMENTS**

**Construction Management:** CONSULTANT shall furnish a Project Manager to coordinate CONSULTANT operations with SANBAG. The Project Manager shall be responsible for all matters related to CONSULTANT personnel and operations. It is recommended that, in addition to a Project Manager, a single point of contact or Senior Resident Engineer be assigned to direct and coordinate construction management activities under this contract. Other Resident Engineers or Assistant Resident Engineers may be assigned to specific project tasks or project responsibilities as needed. Furthermore, the CONSULTANT shall provide a Structures Representative to assist in assuring compliance with contract plans, specifications, and special provisions on all phases of structural construction; however, the Project Manager, Senior Resident Engineer or other Resident Engineer may also serve as the Structures Representative if properly qualified to serve in this capacity. The Project Manager, Senior Resident Engineer, Resident Engineers and the Structures Representative shall be Civil Engineers, currently registered in the State of California. The Resident Engineers shall be in responsible charge of construction activity within his/her project element.

The number of CONSULTANT personnel assigned to the project will vary throughout the duration of the contract. CONSULTANT personnel will be assigned, in varying levels of responsibility, as needed by the CONSULTANT to meet the project schedule, project requirements, and construction activities. The duration of the assignments may vary from a minimum of one (1) week to the full term of the Project. CONSULTANT personnel shall be made available within one (1) week from written notification by SANBAG to a maximum of eight (8) weeks after final acceptance of the Project.

Resumes of personnel must be submitted to SANBAG for review and approval prior to assignment to the Project. SANBAG and CONSULTANT will jointly determine the quality and quantity of services that are required by CONSULTANT personnel. Personnel selected for assignment by CONSULTANT shall be made available for personal interviews prior to acceptance by SANBAG. If, in the opinion of SANBAG, an individual lacks adequate experience, the individual may be rejected or may be accepted on a trial basis until such time the individual's ability to perform the required services has been demonstrated. If, at any time, the performance of CONSULTANT personnel is unsatisfactory to SANBAG, SANBAG may release him/her by written notice and may request another qualified person be assigned.

If CONSULTANT personnel are on leave of absence, the Project Manager shall provide approved, equally qualified replacement personnel until the assigned personnel return to the Project.

CONSULTANT personnel shall be knowledgeable of and comply with all applicable local, state, and federal regulations. CONSULTANT personnel shall cooperate and consult with SANBAG, State, and City officials during the course of the Project. CONSULTANT personnel shall perform

duties as may be required to assure that construction is being performed in accordance with the Project plans and specifications. CONSULTANT personnel shall keep accurate and timely records and document all work performed by the Contractor and CONSULTANT.

CONSULTANT personnel shall monitor for Contractor's compliance with the labor standards provisions of the projects and the related wage determination decisions of the Secretary of Labor.

CONSULTANT personnel shall assist SANBAG and local agencies in obtaining compliance with the safety and accident prevention provisions of the projects. The City of Ontario and Caltrans will retain jurisdictional control over the Contractor's traffic control operations.

CONSULTANT will assist SANBAG in obtaining compliance with the equal opportunity provisions of the projects.

All services required hereunder shall be performed in accordance with California Department of Transportation guidelines, regulations, policies, procedures, manuals, and standards, except as noted in the special provisions. Non-bridge work shall be performed in accordance to the Standard Plans and Specifications for Public Works Construction (Greenbook).

**Materials Testing:** CONSULTANT will provide Materials Testing services on an on-call basis for the duration of the project. The number of field testing personnel required on the project may vary throughout the duration of the construction contract. CONSULTANT certified material testing personnel will be assigned on an as-needed basis to perform material testing as jointly determined by the Senior Resident Engineer and the SANBAG Construction Manager to meet the required numbers and frequencies of testing based on the schedule of the construction contractor.

It is anticipated that at least one field technician will be required throughout the construction contract period. At times, additional technicians may be required to provide support for on-going construction activities. The duration of assignments could vary from a minimum of a few hours to the full term of the project. CONSULTANT personnel will be available within one (1) day of written notification by SANBAG.

It is the intent of SANBAG to maintain a consistency of material testing quality throughout each phase of each project. CONSULTANT is therefore encouraged to provide, where ever and whenever possible, the same field personnel for the duration of construction of each project element. It is also important that the lead field technician assigned to the project becomes completely familiar with the prior testing requirements and assignments for the entire project.

On days when work is not performed by the construction contractor, such as rainy or unsuitable weather days, CONSULTANT will not provide services unless authorized by the SANBAG Construction Manager.

Resumes of materials testing personnel must be submitted to SANBAG for review and approval prior to assignment to a project. If, at any time, the level of performance of any testing personnel is below expectations, SANBAG may release that field person and request that another be assigned as needed.

If CONSULTANT personnel are on a leave of absence, the Project Manager shall provide approved, equally qualified replacement personnel until the assigned personnel return to the Project.

The replacement employee(s) will meet all the requirements of a permanently assigned employee.

All personnel will be knowledgeable of, and comply with, all applicable local, Greenbook, Caltrans, Union Pacific Railroad and federal regulations; cooperate and consult with SANBAG and City of Ontario officials during the course of the contract; and perform other duties as may be required to assure that the construction is being performed in accordance with the project plans and specifications. CONSULTANT's personnel will keep records and document the work as directed by the Senior Resident Engineer.

CONSULTANT personnel shall assist SANBAG, the City of Ontario and other local agencies in obtaining compliance with the safety and accident prevention provisions of the projects. The City of Ontario and Caltrans will retain jurisdictional control over the Contractor's traffic control operations.

All services required hereunder will be performed in accordance with Caltrans regulations, policies, procedures, manuals, and standards, and the Standards for Public Works Construction. Non-bridge work shall be performed in accordance to the Standard Plans and Specifications for Public Works Construction (Greenbook).

**Construction Surveying:** CONSULTANT will furnish surveying crew(s) on an on-call basis to perform construction surveys for the project. The number of survey crew(s) required on the project may vary throughout the duration of the construction contract, but it is anticipated that a minimum of one (1) survey crew may be required throughout the duration of project construction. Additional crews may be required to provide support for construction activities. The duration of assignments could vary from a minimum of a few hours to the full term of the project. CONSULTANT personnel will be assigned as jointly determined by the Senior Resident Engineer and the SANBAG Construction Manager to meet the schedule of the construction contractor.

It is the intent of SANBAG to maintain a consistency of construction survey quality throughout each phase of each project. Therefore, CONSULTANT is encouraged to provide the same field personnel for the duration of construction. It is important that the Field Party Chief(s) assigned to a project be completely familiar with the survey requirements and the assignments for the project.

On days when work is not performed by the construction contractor, such as rainy or unsuitable weather days, CONSULTANT will not provide services unless authorized by the Resident Engineer.

Construction surveying will not be performed when conditions such as weather, traffic, and other factors prevent safe and efficient operation.

Resumes and certification(s) of CONSULTANT personnel proposed for the project must be submitted to SANBAG for review. CONSULTANT personnel must be approved by SANBAG prior to assignment to the project. SANBAG and CONSULTANT will have the responsibility of determining the quality and quantity of work performed by CONSULTANT personnel. If, at any time, the level of performance by CONSULTANT personnel is below expectations, SANBAG may release the survey crew member and request that another be assigned (as needed).

CONSULTANT personnel will:



- Be knowledgeable of, and comply with all, applicable local, Caltrans, state, and federal regulations.
- Cooperate and consult with SANBAG officials during the course of the contract.
- Perform duties as may be required to assure construction is performed in accordance with the project plans and specifications.
- Keep records and document work as directed by the SANBAG Construction Manager and CONSULTANT Senior Resident Engineer.

All services required hereunder will be performed in accordance with Caltrans regulations, policies, procedures, manuals, and standards, and the Standards for Public Works Construction. Non-bridge work shall be performed in accordance to the Standard Plans and Specifications for Public Works Construction (Greenbook).

**Public Outreach:** CONSULTANT will provide a Public Outreach Liaison to perform project related public outreach functions for the project on an as needed basis under the direction and oversight of SANBAG's Public Information Office.

## C. DUTIES AND RESPONSIBILITIES

### 1. Pre-construction Services

#### a. Plan Review

CONSULTANT shall review construction contract documents prior to construction. Tasks include review of plans, specifications, technical reports, resident engineer's pending files, and associated items in order to verify completeness and consistency throughout the Project. At minimum, CONSULTANT shall check for quantity discrepancies, potential conflicts, constructability, and consistency between plans, specifications and pay items.

#### b. Schedule

CONSULTANT shall review the proposed Project schedule, compare it to the Project plans and specifications, and provide recommendations to SANBAG, as appropriate, to ensure efficiency of Contractor and CONSULTANT operations and safe and expeditious completion of the Project.

#### c. Budget

CONSULTANT shall review the Project cost estimate and provide recommendations to SANBAG, as appropriate, to ensure efficient utilization of funds and control of project costs.

**2. Bid Process**

**a. Bid Documents**

CONSULTANT shall assist SANBAG, as requested, with the following tasks:

1. Review of bid documents
2. Preparation of bid tabulations

**b. Pre-construction Meetings**

CONSULTANT shall assist SANBAG in conducting one or more, pre-construction meetings with all involved parties on the Project. Parties may include, but are not limited to, the Contractor, the design engineer, City of Ontario, UPRR, utility companies, and developers.

**c. Contract Award**

CONSULTANT shall assist SANBAG, as requested, with the following tasks:

1. Review of bid for completeness and responsiveness
2. Perform bid analysis
3. Development of contractor payment schedules, and other procedural items.
4. Checking Contractor references, licenses, insurance, and sureties.
5. Coordination with prospective Contractor for award of construction contract(s).
6. Check DBE advisory availability percentage

All processes will be consistent with procedures outlined by the California Department of Transportation for Special Funded Programs and Local Assistance Procedure Manuals and the Greenbook.

**3. Project Administration**

- a. CONSULTANT shall administer project construction contracts using Caltrans Construction Manual as a guideline.
- b. CONSULTANT shall conduct regular project coordination meetings with Contractors, SANBAG, City of Ontario, and others, as appropriate.
- c. CONSULTANT shall prepare Contractor progress payments and maintain payment records and supporting documentation. All progress payments shall be reviewed by SANBAG for approval.

- d. CONSULTANT shall establish and maintain Project records in accordance with Caltrans Construction Manual procedures. Project record keeping shall include, but are not limited to, correspondence, memoranda, contract documents, change orders, claims, SANBAG and engineer directives, meeting minutes, shop drawings, supplementary drawings, and requests for payment. CONSULTANT shall maintain a record of the names, addresses, and telephone and fax numbers of the Contractor, subcontractors, and principal material suppliers.
- e. CONSULTANT shall establish and maintain a filing system for the Project using the Caltrans Construction Manual as a guideline.
- f. CONSULTANT shall monitor Contractors' construction schedules on an ongoing basis and alert SANBAG to conditions that may lead to delays in completion of the Project.
- g. CONSULTANT shall prepare and submit a monthly Activity Summary Report for the project. The activity report shall include status of SWPPP issues, RFIs, contract change orders, and notice of potential claims; construction activities completed, ongoing, and upcoming; status of project budget and schedule, and other highlights and critical issues.
- h. CONSULTANT shall review and ensure compliance with environmental requirements.
- i. CONSULTANT shall participate in partnering sessions with the Contractor, SANBAG, and City of Ontario, as required.
- j. CONSULTANT shall ensure that the Project meets all provisions of the Caltrans Quality Assurance Program Manual and the Greenbook quality standards as appropriate.
- k. CONSULTANT shall review Contractors' certified payroll records and ensure compliance with the contract.
- l. CONSULTANT shall ensure that the Project meets all provisions of the Storm Water Pollution Prevention Plan (SWPPP).
- m. CONSULTANT shall assure that the Project meets all applicable regulations of the Air Quality Management District (AQMD).

#### 4. Construction Coordination

- a. CONSULTANT shall provide a minimum of one qualified Senior Resident Engineer and other qualified Resident Engineers, as needed to effectively manage the Project.
- b. CONSULTANT's Senior Resident Engineer shall act as a prime point of contact between Contractor, SANBAG, CONSULTANT's construction surveyor, CONSULTANT's materials inspector, and utility companies. CONSULTANT's Project Manager or Senior Resident Engineer may, when requested by SANBAG,

act as point of contact between design engineers, UPRR, the City of Ontario, and the public.

CONSULTANT shall ensure coordination with property and business owners adjacent to project right-of-way to ensure timely communication regarding property-condition survey, construction activities, scheduling and maintaining access to properties.

- c. CONSULTANT shall maintain regular, daily contact with SANBAG's Construction Manager, or his designees, in face-to-face meetings, by telephone or by email, as appropriate.
- d. CONSULTANT shall coordinate utility relocations with utility companies and their designees, as well as the utility inspector.
- e. CONSULTANT shall proactively review Project plans and special provisions for possible errors and deficiencies prior to construction of any specific element and report such findings to SANBAG. Should SANBAG determine that changes are necessary, CONSULTANT shall assist in implementation and processing of change orders in accordance with contract documents.
- f. CONSULTANT shall proactively review Project plans and special provisions; monitor, coordinate, and track construction progress schedule and RFIs; and communicate with various agencies prior to construction of any specific elements to ensure the Project proceeds on schedule and according to the order of work in the plans and special provisions. CONSULTANT shall expedite work, as required, to maintain schedule in conjunction with the overall construction staging program.
- g. CONSULTANT shall coordinate review of shop drawings and Requests for Information (RFI) with the SANBAG Construction Manager, or his designees. CONSULTANT shall log and track all submittals and requests.
- h. CONSULTANT shall provide a qualified SWPPP coordinator who shall review contractor prepared Storm Water Pollution Prevention Plans (SWPPP) and coordinate approval with SANBAG and City of Ontario. CONSULTANT shall cooperate with monitoring agency inspections and field reviews.
- i. CONSULTANT shall coordinate the implementation of any changes with the SANBAG Construction Manager, or his designees, and the design engineer.
- j. CONSULTANT shall review and approve the Contractor's falsework and shoring plans.
- k. CONSULTANT shall review and approve the Contractor's Traffic Control Plans.
- l. CONSULTANT shall coordinate all Project construction activities with other on-going projects within and adjacent to the Project limits.

5. Construction Inspection

- a. CONSULTANT shall coordinate all required inspections necessary for the Project. CONSULTANT shall ensure that appropriate SANBAG, Caltrans, City of Ontario, other local agency, utility, and railroad personnel are notified and present as required throughout the Project. CONSULTANT shall notify SANBAG immediately regarding any directives, recommendations, notices, etc. received from agencies other than SANBAG.
- b. CONSULTANT shall perform daily on-site observations of the progress and quality of construction to determine if the work being performed is in general conformance with the contract documents, all applicable laws, codes, and ordinances.
- c. CONSULTANT shall exercise reasonable care and diligence to discover and promptly report to SANBAG any and all defects or deficiencies in the materials or workmanship used in the Project.
- d. CONSULTANT personnel assigned to the Project shall be thoroughly familiar with Caltrans Standard Specifications, Caltrans Standard Plans, the Standard Plans and Specifications for Public Works Construction (Greenbook), American Railway Engineering and Maintenance-of-Way Association (AREMA) standards, and UPRR construction and safety standards. CONSULTANT personnel shall have the ability to read and interpret construction plans and specifications. CONSULTANT personnel shall also have knowledge of State of California Construction Safety Orders, California Occupational Safety and Health Agency (CalOSHA) requirements, and traffic control practices as specified in the Work Area Traffic Control Handbook (WATCH). In addition, CONSULTANT personnel shall be familiar with the construction requirements of the City of Ontario's Storm Water Pollution Prevention Program.
- e. Assignments to be performed by CONSULTANT personnel shall include, but are not limited to, the following:
  1. Paving and subgrade inspection, structures and foundation inspection, signing and striping inspection, quantity calculations, checking grade and alignment, monitoring construction traffic control, and all other duties required to determine that construction of the Project is being performed in accordance with the contract documents.
  2. Identifying actual and potential problems associated with the Project and recommending sound engineering solutions to the Project Manager.
  3. Maintaining awareness of safety and health requirements. Monitoring Contractors' compliance with applicable regulations and construction contract provisions for the protection of the public and Project personnel.
  4. Preparing complete and accurate daily reports, calculations, project records, payment quantity documents, contract change orders, reports, and correspondence related to Project activities.

5. Preparing construction sketches, drawings, and cross-sections, as necessary.
6. Assisting in the preparation of as-built plans by maintaining a red-lined set of as-built construction drawings showing changes made to the original contract plans during construction. Names, dates and CCO numbers shall be identified on the plans, if applicable.
7. Perform basic sampling of construction materials in the field in accordance with appropriate test methods.
8. Providing inspections for environmental compliance.
9. Maintaining awareness of water discharge requirements. Monitoring Contractors' compliance with applicable regulations and construction contract provisions.
10. Monitoring Contractors' compliance with applicable regulations required by AQMD.
11. Other duties as may be required or reasonably requested.

6. Project Support

a. Construction Surveys

CONSULTANT shall provide qualified, experienced personnel and all equipment necessary to perform various construction surveying services, field calculations, and home office calculations to support construction of the project on an on-call, as-needed basis. CONSULTANT may be requested to review available survey data, construction plans, and right-of-way plans to confirm compatibility and to identify discrepancies prior to and during construction of proposed project. The Senior Resident Engineer will assign survey work to the survey personnel by issuing a "Request for Survey Services". Requests may include, but not be limited to, the following types of surveys and related services:

I. Construction Surveys

Survey personnel shall assist the Senior Resident Engineer in all phases of construction staking and calculations as needed.

- a. Survey calculations and adjustments shall be performed with established and computed coordinates based on the California Coordinate System.
- b. Cross-section data collection shall be performed by conventional and terrain line interpolation survey methods.

c. Survey data will include topography, cross-section, and other survey data in computer formats compatible with the AUTOCAD version 2004 or higher, design software.

d. Prepare and maintain survey documents. Survey documents include survey field notes, maps, drawings, and other survey documents.

e. Perform construction staking, including but not limited to:

- Utility relocations.
- Clearing limits.
- Slope staking.
- Storm drain, sanitary sewer, and irrigation systems.
- Drainage structures.
- Curbs, gutters, and sidewalk.
- Horizontal and vertical control for structures and portions of structures (bents, abutments, wingwalls, etc.).
- Horizontal and vertical control for rail construction.
- Rough grade.
- Finish grade.
- Other survey services needed for the proper and timely completion of the project.

f. Monitor for settlement if required.

g. Global Positioning Satellite (GPS) equipment shall be made available if required by SANBAG.

## II. Grid Grades

Grid grade data shall provide pavement elevations at the station line, the left edge of pavement, the right edge of pavement, and the right edge of travel way at 25 foot intervals for travel lanes.

## III. Open Ended Traverses and Profile Data Sheets

Separate open-ended traverse calculations and point maps shall depict plan data for station lines, utility lines, wall layout lines, and abutment/bent alignment. Specific information to be shown will be part numbers, coordinates, bearings, and curve data.

Profile data sheets are required for all profiles shown on the plans identifying vertical design elements such as grade, point of intersection (PI) location, beginning of vertical curve (BVC) location, end of vertical curve (EVC) location, and curve length.

## IV. Three Line Profiles

Separate profile plots are required for the left edge of pavement, the right edge of pavement, and the edge of shoulder for all travel lanes.

## **V. Right of Way Lines**

a. Existing right of way and easements will be established from Local Agency's record information and existing monumentation.

- Right of way monumentation shall be renewed and restored in accordance with the appropriate standard; Section 2-9.1, of the Greenbook "Permanent Survey Markers" or Section 10.4 of the Caltrans "Survey Manual" and the State of California Land Surveyor's Act.

- Corner records and records of surveys shall be prepared and filed in accordance with the applicable standards and the State of California Land Surveyor's Act.

- Perpetuate existing monumentation  
Includes restoring, renewing, referencing, and resetting existing boundary related monumentation. In addition, stake areas where construction disturbs the existing right of way, preparing and filing required maps and records.

b. New right of way and easements will be established from plans, right of way maps, utility drawings, and Local Agency record information, and existing monumentation.

- Right of Way Surveys  
Includes research and preparation filing of required maps and records. In addition, locate and set monuments for right of way and easement lines, staking for right of way and easement fences.

- Final monumentation  
Includes setting of centerline points of control upon completion of construction.

## **VI. Special Design – Data Surveys**

Includes drainage, utility, and surveys required for special field studies and possible change order work.

## **VII. Control Survey**

Includes project control surveys, horizontal and vertical control surveys. In addition control surveys will include restoration, renewal, reference, relocation, and resetting of existing control monumentation. The CONSULTANT will be required to provide horizontal and vertical control at the end of each bridge.

## **VIII. Topographic Surveys**

Topographic surveys will normally be compiled by ground survey methods only. CONSULTANT will provide all necessary Project related surveys and construction staking, including horizontal and vertical control, right of way, and easements. CONSULTANT shall coordinate all staking and verify accuracy. CONSULTANT



shall ensure timely coordination of all staking requests from the Contractor.

**b. Materials Testing and Geotechnical Services**

CONSULTANT will provide experienced personnel, equipment, and facilities to perform various construction materials sampling and testing. Laboratory and field materials testing will be used to ensure that structure and roadway construction work conforms to the appropriate (California State Department of Transportation (Caltrans) or Standards for Public Works Construction (Greenbook)) standards, specifications, and special provisions for material quality and workmanship.

Field and laboratory testing is to be performed in accordance with the applicable standards.

CONSULTANT will be responsible for the accuracy and completeness of all test data compilation and results.

**c. Public Relations**

SANBAG and the City of Ontario will implement a public awareness program for the Project. SANBAG shall coordinate public awareness for the grade separation project directly in conjunction with the City of Ontario and other local agencies. The SANBAG Public Information Officer (PIO) will manage all public awareness activities for this Project. CONSULTANT shall cooperate with SANBAG's PIO and its public relations firm in the dissemination of appropriate Project information as appropriate. Should CONSULTANT's Resident Engineers receive complaints from the public or other entities, he/she shall promptly notify SANBAG's PIO. CONSULTANT shall maintain a log of all complaints and inquiries. When appropriate, CONSULTANT shall direct the Contractor to remedy complaints in a timely manner.

**d. Permits**

CONSULTANT shall review each project element for permit compliance and coordinate with SANBAG, the City of Ontario, the design engineer, and other SANBAG consultants to ensure that necessary permits are obtained. CONSULTANT shall assist SANBAG in the coordination, timely processing and verification of approval for all permits. CONSULTANT shall maintain permits and permit documentation on site.

**7. Cost and Schedule**

**a. CONSULTANT shall monitor and track the following:**

1. Contract pay item quantities and payments
2. Contract change orders
3. Supplemental work items
4. Agency furnished materials
5. Contingency balance

6. Project budget
7. Public Outreach Program

- b. CONSULTANT shall proactively review and monitor Contractor's schedule and inform SANBAG of any significant changes or deviations in the schedule.
- c. CONSULTANT shall provide and maintain a Project staffing plan of field office personnel. In cooperation with SANBAG, the staffing plan shall be periodically updated to reflect Project progress and needs.

8. Contract Change Orders and Claims

- a. CONSULTANT shall receive and evaluate requests for changes and/or substitutions by the Contractor. Contract Change Orders submitted to SANBAG shall be accompanied by CONSULTANT recommendations. Where applicable, CONSULTANT shall convey proposed changes to design engineer, or other project consultants. If the requested changes are accepted, CONSULTANT shall negotiate and prepare appropriate Contract Change Orders.

- b. CONSULTANT shall attempt to avoid all unnecessary Contract Change Orders. When a Contract Change Order is necessary, CONSULTANT shall consult with SANBAG prior to its preparation. Unless directed otherwise by SANBAG, the preferred method of payment for Contract Change Orders should be as follows

1. Agreed Price
2. Adjustment in compensation to a bid item
3. Time and materials or Force Account

CONSULTANT shall perform force account analysis to validate cost submitted by the Contractor for contract change orders with agreed unit price, lump sum price, and adjustment in components. Analysis shall be based on realistic production and resource needs to complete the work.

- c. CONSULTANT shall attempt to identify all potential claims, track and monitor unresolved claims, and implement claims avoidance processes where in the best interests of SANBAG.
- d. CONSULTANT shall assist SANBAG, as requested, in the identification, resolution, and final disposition of claims filed by the Contractor or third parties against SANBAG or the Project.

9. Safety

In addition to the requirements specified elsewhere in this contract, the following shall also apply:

- a. CONSULTANT shall implement and conduct a comprehensive safety program

including regular tail-gate safety meetings for CONSULTANT personnel. CONSULTANT shall provide monthly CONSULTANT status of safety reports.

- b. CONSULTANT shall comply with State of California Construction Safety Orders and provisions of the Caltrans Construction Manual.
- c. CONSULTANT shall provide appropriate safety training for all CONSULTANT field personnel.
- d. CONSULTANT shall provide all necessary safety equipment as required for CONSULTANT personnel.

10. Project Close Out

- a. CONSULTANT shall prepare a list of items to be completed and/or corrected by the Contractor for final completion of the Project.
- b. CONSULTANT shall collect and furnish as-built information to the design engineer for preparation of as-built drawings including pile logs, as applicable.
- c. CONSULTANT shall review and verify completeness of as-built drawings.
- d. CONSULTANT shall conduct a final walk-through with SANBAG, City of Ontario, Contractors, and design engineers.
- e. CONSULTANT shall prepare final construction reports including the Project Completion Report.
- f. CONSULTANT shall prepare and deliver to SANBAG all project files.
- g. CONSULTANT shall assist SANBAG and Contractor in obtaining final release of all project permits.

D. DELIVERABLES

- 1. Inspector daily reports, extra work diaries, and Resident Engineers' daily diaries
- 2. Monthly Project Activity Summary Reports
- 3. Monthly Contractor progress payments, back-up documentation, and Contractor payment records.
- 4. Contractor final payment documents, delivered to SANBAG no later than ten (10) working days after acceptance by SANBAG of the completed construction projects
- 5. Project Completion Report
- 6. All project files, project reports, correspondence, memoranda, shop drawings, project logs, change order data, claims and claim reports, and Contractor payment records

7. Certified payrolls and fringe benefit statements for all employees, CONSULTANT and Contractor, who are subject to the State and/or Federal prevailing wage rates
8. All material test results will be provided in accordance with the applicable Standard Specifications and Special Provisions, and test method. Failing tests will be immediately reported to the Resident Engineer or Structures Representative for resolution. All test results will be recorded on the appropriate forms. The test documents will be legible and show the identity of the tester where appropriate. A notebook containing all test results will be maintained throughout the duration of the project.
9. Unless otherwise specified in the survey request, the deliverables shall conform to the following:
  - a. Survey points, lines, and monuments shall be established, marked, identified, and referenced as required by survey request and requirements herein.
  - b. Survey notes, drawings, calculations, and other survey documents and information shall be completed as required by the survey request and the requirements herein.
  - c. All original survey documents resulting from this contract, including original field notes, adjustment calculations, final results, and appropriate intermediate documents, shall be delivered to the Resident Engineer and shall become the property of SANBAG. A copy of all survey documents furnished by SANBAG shall be retained by CONSULTANT for future reference.

When the survey is performed with a total station survey system, the original field notes shall be a hard copy in a readable format of the data (observations) as originally collected and submitted by the survey party. The hard copy shall be signed by the Party Chief. If the Party Chief is not licensed, the person in "responsible charge" will be required to sign.

- d. Deliverables to the Senior Resident Engineer shall follow the format specified below:
  - Horizontal Control
    - Alpha numeric hard copy point listing with adjusted California Coordinate System northing and eastings and the appropriate descriptions.
  - Vertical Control
    - Alpha numeric hard copy benchmark listing with adjusted elevations compatible with the design datum.
  - Topography
    - Alpha numeric hard copy listing, hard copy drawing, and computer aided drawing and design (CADD) digital drawing. The CADD drawing shall be compatible with the systems utilized by the jurisdictional cities for each project.

Data collection method used to collect cross-section data and the coding (feature description) of terrain data for cross-sections shall conform to the survey request requirements. Deliverables shall depend on the data collection method as follows:

1. Conventional Cross – Sections (each cross – section): For each cross - section and alpha numeric listing, a hard copy drawing, and a computer formatted file compatible with the systems utilized by the jurisdictional cities for each project.
  2. Terrain Line Interpolation Cross – Section Data (each terrain line interpolation survey): Terrain line interpolation cross – sections shall include an alpha numeric listing, a hard copy plan view drawing of the terrain lines, and a computer input file. The computer input file shall be provided on compact discs and shall be in a format compatible with the systems utilized by the jurisdictional cities of each project.
- e. Data Collector Data  
If specified in the survey request, the raw data from the data collector shall be provided in a format conforming to the survey request requirements.
- f. Other—As specified in the survey request.

**E. EQUIPMENT AND MATERIALS TO BE PROVIDED BY CONSULTANT**

1. CONSULTANT shall provide all necessary equipment including software, materials, supplies, miscellaneous tools, and safety equipment required for its personnel to perform the services accurately, efficiently, and safely. Only those items listed in Attachment B, CONSULTANT Cost Proposal, shall be reimbursed by SANBAG.
2. CONSULTANT personnel shall be provided with vehicles suitable for the location and nature of the work involved. Vehicles shall be equipped with flashing yellow beacon lights, either permanently or temporarily affixed, and operated with a driver control switch.
3. CONSULTANT personnel shall be provided with a mobile radio, cellular phone, or other means to assure full-time communication. If a radio system is to be used, CONSULTANT shall provide a base station at the field office.
4. CONSULTANT personnel shall be provided with all applicable standard plans, specifications, and other standards as appropriate (see item G below).
5. For Materials Testing, CONSULTANT and its staff will be fully equipped at all times to perform the services required, including but not limited to the following:
  - a. An on-site mobile laboratory or laboratory in close proximity to the project will be required. The type and location of the lab should be such that it can meet the needs of the project in an efficient, time effective manner. The laboratory is to be fully staffed, equipped, and supplied to conduct all required soils, materials, and concrete breaking tests in a timely manner.
  - b. CONSULTANT's personnel will be provided with radios, mobile phones, or other means to assure full-time communication. CONSULTANT vehicles shall be equipped with flashing yellow beacon lights, either permanently or temporarily

affixed, and operated with a driver control switch.

Each vehicle is to be fully contained with all necessary equipment and supplies necessary to perform the field sampling and tests required.

- c. Field personnel will be provided with all necessary safety equipment to permit work to be performed safely and efficiently within operating highway and construction zone environments.
  - d. All equipment to be calibrated as per Section 3-10 and 3-11 of Caltrans' Quality Assurance Program Manual or the Greenbook, as applicable.
6. For construction surveying, CONSULTANT and staff shall have adequate equipment and supplies to complete the required survey work. Equipment and supplies shall, include, but not be limited to:
- a. Survey vehicles:

Survey vehicles will be suitable to perform the required work in varying terrain and conditions encountered on the project. Vehicles shall be fully equipped with all necessary tools, instruments, supplies, and safety equipment required to perform the work accurately, efficiently, and safely. Vehicles shall be equipped with flashing yellow beacon lights, either permanently or temporarily affixed, and operated with a driver control switch.
  - b. Data Processing Systems:

Data processing systems shall include hardware and software to:

    - Perform survey and staking calculations from the design plans and specifications;
    - Reduce survey data collected with conventional and total station survey systems;
    - Perform network adjustments for horizontal and vertical control surveys;
    - Format survey data to be compatible with AUTOCAD version 2004 or higher, design software.
  - c. Drafting equipment and supplies.
  - d. Digital calculators.
  - e. Hand tools as appropriate for the requested survey work.
  - f. Traffic cones (minimum 25). Traffic cones shall be 28 inches in height (minimum).
  - g. Traffic control devices as required to perform the requested survey work. Traffic control devices include signs, sign bases, flags, and hand held signs.

- h. Leveling instruments and equipment:
  - Self-leveling level. Precision: standard deviation in one mile of double run leveling 0.005 feet or less.
  - Suitable level rods for the work to be performed.
- i. Distance measuring instruments and equipment:
  - Electronic distance measurer (EDM). Precision: standard deviation 3 mm plus 3 PPM, or less; Range: Minimum one mile under average atmospheric conditions.
  - Prisms, sufficient to perform the required work.
  - Tapes; steel, cloth.
- j. Angle measuring instruments and equipment:
  - Theodolite for non-control surveys; Precision: direct circle reading to three seconds, or equivalent, horizontal and vertical.
  - Targets as required to perform the work.
- k. When required for efficient survey operations, total station survey systems consisting of an electronic angle measuring instrument, EDM, and electronic data collector shall be provided. The angle measuring instruments and EDM shall conform to the requirements for the equipment previously listed.
- l. Radio or cellular communications equipment for communication between field office and field crews.
- m. All manuals, standards, forms, and other policies and procedures to be followed to perform the required work.
- n. GPS Equipment if requested by SANBAG.

**F. MATERIALS TO BE FURNISHED BY SANBAG**

- 1. SANBAG will provide copies of all Project construction documents including plans, special provisions, reports, designer prepared resident engineer files, and contracts.
- 2. SANBAG will provide copies of all previously secured permits and Project authorizations.
- 3. Construction contractor will provide office space, telephones, desks, chairs, computers, and appropriate office equipment for use by Construction Management Consultant staff.
- 4. Appropriate forms for recording test data in accordance with Greenbook practices and procedures.

**G. STANDARDS**

All construction inspection, surveys, materials sampling and testing, and contract administration shall be in accordance with the Project bid documents, special provisions, plans, current manuals, Caltrans and Greenbook standards including:

1. Caltrans Construction Manual and its revisions
2. Caltrans Bridge Construction Records and Procedures Manual
3. Manual of Traffic Controls for Construction and Maintenance Work Zones
4. Caltrans Standard Specifications and Standard Plans.
5. Caltrans Storm Water Pollution Prevention Plan (SWPPP) and Water Pollution Control Program (WPCP) Preparation Manual
6. Caltrans Survey Manual
7. Standard Specifications and Standard Plans for Public Works Construction.
8. American Railway Engineering and Maintenance-of-Way (AREMA)

Work not covered by the manuals shall be performed in accordance with accepted professional standards.

Surveys performed by CONSULTANT shall conform to the requirements of the Land Surveyor's Act. In accordance with the Land Surveyor's Act, "responsible charge" for the work shall reside with the Licensed Land Surveyor or a pre-January 1, 1982, Registered Professional Civil Engineer in the State of California.

Unless otherwise specified in the survey request, control surveys shall conform to second order (modified) accuracy standards as specified in the Caltrans "Survey Manual".

Additional standards for specific survey work may be included in the applicable request for survey. Such standards supplement the standards specified herein. If additional standards conflict with the standards specified herein, the additional standards contained in the request for survey shall govern.

The Senior Resident Engineer and SANBAG will decide all questions which may arise as to the quality or acceptability of deliverables furnished and work performed for this contract. Any CONSULTANT employee who does not perform adequately will be replaced if directed by the SANBAG Construction Manager.

#### **H. AVAILABILITY AND WORK HOURS**

The typical workday includes all hours worked by the construction Contractor. If necessary, overtime for CONSULTANT personnel may be required. The construction Contractor's operations may be restricted to specific hours during the week, which shall become the normal workday for CONSULTANT personnel. The Project Manager, with concurrence from SANBAG, shall have the authority to increase, decrease, or eliminate CONSULTANT personnel work hours dependent on the schedule and requirements of the construction Contractor. On days when work is not performed by the construction contractor, such as rainy or unsuitable weather days, CONSULTANT services will not be provided unless authorized by the SANBAG Construction



Manager. When possible, the Senior Resident Engineer will provide 8 hours advance notice if consultant services are not required.

Unless otherwise directed by SANBAG, the normal work week will consist of 40 hours. From time to time, overtime may be required. However all overtime required by CONSULTANT personnel shall be approved and authorized by SANBAG in advance.

Once the notice to proceed has been issued, CONSULTANT will immediately begin providing the required scope of services as described herein. Once services begin, the CONSULTANT will proceed diligently until all required services have been satisfactorily completed.

#### **I. LIMITATIONS TO AUTHORITY**

CONSULTANT does not have the authority to:

1. Authorize deviations from the contract documents.
2. Approve substitute materials or equipment; except as authorized in writing by SANBAG.
3. Assume any of the responsibilities of the Contractor, Contractor's Superintendent, or subcontractors.
4. Exercise control over or be responsible for construction means, methods, techniques, sequences, procedures, or safety precautions.
5. Communicate directly with subcontractors or material suppliers without the prior consent of the Contractor.
6. Verbally authorize or approve change orders or extra work for the Project.
7. Offer or receive incentives, inducements, or other forms of enumeration to or from the Contractor to perform services or work outside the terms of any executed contracts for this Project.

#### **J. THIRD PARTY RELATIONSHIPS**

This Contract is intended to provide unique services for specific project that is a portion of the Measure I Valley Major Projects Program within San Bernardino County. In the development of the Project, SANBAG has worked closely with various professional consultants, City of Ontario and other agencies, and others in the preparation of the construction documents and other Project related materials. SANBAG, however, is solely responsible for and will be the sole point of contact for all contractual matters related to this Project. CONSULTANT shall take direction **only** from SANBAG and shall regularly inform **only** SANBAG of Project progress, outstanding issues, and all Project related matters.

During the course of the Project, CONSULTANT may find occasion to meet with City or County representatives, the design engineer, UPRR representatives, Project consultants, or other third parties who have assisted with the Project. These entities may, from time to time, offer suggestions and/or recommendations regarding the Project or elements of the Project. While SANBAG enjoys a

close relationship with and has considerable confidence in the capabilities of these other parties, CONSULTANT shall not act on any suggestions, solicited or unsolicited, without obtaining specific direction from SANBAG. All oral and written communication with outside agencies or consultants related to the project shall be directed only to SANBAG. Distribution of Project related communication and information shall be at the sole discretion of SANBAG representatives.

**K. CONSTRUCTION SITE SAFETY**

In addition to the requirements specified elsewhere in this contract, the following also will apply.

1. CONSULTANT will conform to the safety provisions of the Caltrans Construction Manual.
2. CONSULTANT's field personnel will wear white hard hats with proper suspension, orange vests with reflective tape, sleeved shirt, long pants, and leather boots with ankle support and rubber soled shoes at all times while working in the field.
3. CONSULTANT will provide appropriate safety training for all CONSULTANT's personnel, including work on and near highways and railroads.
4. All safety equipment for CONSULTANT's personnel will be provided by CONSULTANT.

**L. BASIS FOR SURVEY AND MONUMENT STAKING**

SANBAG will designate the existing horizontal and vertical control monuments that are the basis of CONSULTANT performed surveys. SANBAG will provide the California Coordinate System values and/or elevation values for these monuments. CONSULTANT shall adjust CONSULTANT performed surveys to be the designated control monuments and the values.

Monuments established by CONSULTANT shall be marked by CONSULTANT with furnished disks, plugs, tags. In addition, CONSULTANT shall identify CONSULTANT established monuments by tagging or stamping the monuments with the license or registration number of CONSULTANT'S surveyor who is in "responsible charge" of the work.

**M. PERSONNEL QUALIFICATIONS AND RESPONSIBILITIES**

The quantity and qualifications of field personnel to be assigned will be determined by the scope of the Project and the degree of difficulty of required tasks to be performed. All personnel and personnel assignments shall be subject to approval by SANBAG. While some areas of responsibility may overlap, as a guideline, CONSULTANT personnel assigned to the project shall have the following minimum qualifications:

**1. Project Manager**

Minimum qualifications shall be as follows:

- a. Six (6) years project management experience on similar construction projects.
- b. Licensed Professional Civil Engineer in the State of California.

- c. Reasonably accessible to SANBAG during normal working hours.
- d. A thorough understanding of Caltrans and Greenbook construction practices and procedures.

The Project Manager will assume the following functional responsibilities:

- a. Review, monitor, train, and provide general direction for CONSULTANT personnel.
- b. Assign personnel to projects on an as-needed basis.
- c. Administer personal leave.
- d. Prepare monthly reports for delivery to SANBAG.
- e. Assist with the Public Outreach Program established for the project.

2. Senior Resident Engineer

Minimum qualifications shall be as follows:

- a. Eight (8) years resident engineer experience on similar construction projects.
- b. Licensed Professional Civil Engineer in the State of California.
- c. Ability to work independently, make effective decisions concerning construction work in progress, and solve field problems.
- d. Reasonably accessible to SANBAG at all times including weekends and holidays.
- e. Thorough understanding of Greenbook and Caltrans field methods, practices, and construction office procedures.

The Senior Resident Engineer will assume the following functional responsibilities:

- a. Monitor and provide daily direction to CONSULTANT Resident Engineers and inspection personnel.
- b. Assign field personnel to specific project tasks.
- c. Monitor and track Contractor progress.
- d. Prepare daily, weekly and monthly reports as required.
- e. Coordinate utility relocations with appropriate agencies and the utility inspector.
- f. Act as prime field contact between various project Contractors and SANBAG's Construction Manager.

- g. Assist with the Public Outreach Program established for the project.

3. Resident Engineer

Minimum qualifications shall be as follows:

- a. Four (4) years resident engineer experience on similar construction projects.
- b. Licensed Professional Civil Engineer in the State of California.
- c. Ability to work independently, make effective decisions concerning construction work in progress, and solve field problems.
- d. Accessible to SANBAG at all times including weekends and holidays.
- e. Thorough understanding of Greenbook and Caltrans field methods, practices, and construction office procedures.

The Resident Engineer shall act under the direction of the Senior Resident Engineer and will assume the following functional responsibilities:

- a. Monitor and provide daily direction to CONSULTANT inspection personnel.
- b. Assign field personnel to specific project tasks.
- c. Monitor and track Contractor progress.
- d. Prepare daily, weekly and monthly reports as required.
- e. Coordinate utility relocations with appropriate agencies.
- f. Act as prime field contact between SANBAG's Construction Manager and the various project Contractors.
- g. Coordinate Contractor's survey requests and schedule appropriately qualified personnel to provide requested services.
- h. Work with City of Ontario and Caltrans staff to resolve jurisdictional traffic control issues.

4. Lead Field Inspector

Minimum qualifications shall be as follows:

- a. Six years (6) construction inspection experience in public works or similar projects or a four-year degree in the field of civil engineering and four years of similar construction experience.

- b. Knowledge of Caltrans, Greenbook and AREMA construction practices, physical characteristics and properties of construction materials, WATCH manual traffic control methods and requirements, and approved methods and equipment used in making physical tests of construction materials.
- c. Ability to work independently, make effective decisions concerning construction work in progress, and solve field problems.
- d. Ability to direct the efforts of subordinate inspectors.
- e. Understanding of Greenbook and Caltrans field and construction office procedures.
- f. Ability to use an automatic level and transit for the purpose of verifying line and grade.

The Lead Field Inspector will assume the following functional responsibilities:

- a. Assist in inspections to assure compliance with contract plans, specifications, and special provisions on all phases of construction.
- b. Assist in the preparation of contract change orders, contract estimates, progress pay estimates, and other documents or reports required for the Project.
- c. Coordinate field testing of materials to monitor compliance with Project specifications and Caltrans Quality Assurance Program.
- d. Maintain accurate and timely project records. Perform quantity calculations for progress pay estimates.
- e. Perform analytical calculations such as basic earthwork, grading, profiles, and special staking procedures.
- f. Provide input for the redesign of facilities to fit existing field conditions.
- g. Monitor and track Contractor progress. Prepare daily, weekly, and monthly reports as required.

##### 5. Field Inspector

Minimum qualifications shall be as follows:

- a. Two years construction inspection experience in public works or similar projects or a four-year degree in the field of civil engineering.
- b. Knowledge of construction practices, physical characteristics and properties of construction materials, and approved methods and equipment used in making physical tests of construction materials.

- c. Ability to work independently. Ability to make minor decisions concerning construction work in progress and to solve field and office problems.
- d. Understanding of Greenbook , Caltrans and AREMA construction methods and practices.
- e. Ability to use an automatic level and transit for the purpose of verifying line and grade.

The Field Inspector will assume the following functional responsibilities:

- a. Assist in inspections to assure compliance with contract plans, specifications, and special provisions on all phases of project construction.
- b. Assist in preparation of contract change orders, contract estimates, progress pay estimates, and other documents or reports required for the Project.
- c. Coordinate field testing of materials to monitor compliance with Project specifications and Caltrans Quality Assurance Program.
- d. Perform quantity calculations for progress pay estimates and maintain Project records.
- e. Perform analytical calculations such as basic earthwork, grading, profiles, and special staking procedures.
- f. Provide input for the redesign of facilities to fit existing field conditions.
- g. Perform labor compliance interviews of the Contractors' personnel.
- h. Perform construction materials sampling

6. Structural Representative or Lead Structural Inspector

Minimum qualifications shall be as follows:

- a. Six (6) years of bridge or structural construction inspection as related to major public works projects and a four-year degree in civil or structural engineering.
- b. Licensed Professional Civil or Structural Engineer in the State of California.
- c. Knowledge of stress analysis, structural mechanics, and strength of materials.
- d. Knowledge of construction practices and the physical characteristics and properties of various highway and railroad bridge construction materials including both concrete and steel.

- e. Experience in the following areas: reinforced concrete foundation construction , pile driving, shoring, retaining wall construction and steel bridge construction..
- f. Ability to work independently. Ability to perform duties in the construction field office and effectively make decisions concerning construction work in progress and solving field problems.
- g. Ability to direct the efforts of subordinate inspectors.
- h. Ability to use an automatic level and transit for the purpose of verifying line and grade.
- i. Thorough understanding of Greenbook and Caltrans field methods, practices, and construction office procedures.

The Structural Representative shall assume the following functional responsibilities:

- a. Assist in inspections to assure compliance with contract plans, specifications, and special provisions on all phases of structural construction such as bridges, foundations, walls, shoring, and drainage structures.
- b. Make grade, alignment, quantity, and shoring calculations.
- c. Assist in the preparation of contract change orders, contract estimates, progress pay estimates, and other documents or reports required for the Project.
- d. Coordinate the sampling and testing of construction materials to monitor compliance with contract specifications.
- e. Monitor and track Contractor progress. Prepare daily, weekly, and monthly reports as required.
- f. Coordinate with Resident Engineer, as well as the Construction Staking and Material Testing consultants.
- g. Direct subordinate inspectors.

#### 7. Structural Inspector

Minimum qualifications shall be as follows:

- a. A minimum of two (2) years of bridge design or structural construction inspection as related to Caltrans or major public works projects or a four-year degree in civil or structural engineering.
- b. Knowledge of stress analysis, structural mechanics, and strength of materials.

- c. Knowledge of construction practices and the physical characteristics and properties of various highway and railroad bridge construction materials including both concrete and steel.
- d. Experience in one or more of the following areas: pile driving, reinforced concrete foundation construction, retaining wall construction, steel bridge construction, and shoring.
- e. Ability to work independently and make minor decisions concerning construction work in progress and to solve field and office problems.
- f. Ability to use an automatic level and transit for the purpose of verifying line and grade.

The Structural Inspector will assume the following functional responsibilities:

- a. Assist in inspections to assure compliance with contract plans, specifications, and special provisions on all phases of structural construction such as bridges, foundation, walls, shoring, and drainage structures.
- b. Make grade, alignment, quantity, and shoring calculations.
- c. Assist in the preparation of contract change orders, contract estimates, progress pay estimates, and other documents or reports required for the Project.
- d. Sampling and testing of construction materials to monitor compliance with contract specifications and Caltrans Quality Assurance Program.

#### 8. Office Engineer

Minimum Qualifications shall be as follows:

- a. Two years (2) office engineering on similar construction projects.
- b. Knowledge of Caltrans Office of Highway Construction forms used to administer construction projects.
- c. Knowledge of Caltrans system of document organization.
- d. Knowledge of construction records and accounting procedures.
- e. Knowledge of documentation, procedures, and reporting for state funded projects.
- f. Knowledge of laws and regulations governing the payment of prevailing wages.

The Office Engineer will assume the following functional responsibilities:

- a. Process monthly progress pay estimates, monthly status reports, extra work reports, and weekly statements of working days.



- b. Prepare and process contract change orders.
- c. Monitor construction budget and schedule.
- d. Prepare, maintain, and/or file project documents including labor and equipment records, correspondence, memoranda, meeting minutes, claims, personnel records, labor compliance reports, and daily, weekly, and monthly reports.
- e. Perform routine calculations and checking of quantities.
- f. Coordinate all office activities and functions with SANBAG representatives.

CONSULTANT's personnel will be capable of performing the types of material testing services described above in "Description of Required Services" with minimal instructions.

9. Materials Testing Project Manager

- a. Four years project management experience on a similar highway/rail bridge construction project.
- b. Licensed civil engineer in the State of California.
- c. Ability to use typical computer programs including word processing and spreadsheets.

The project manager will assume the following functional responsibilities:

- a. Review, monitor, train, and provide general direction for CONSULTANT's laboratory and field personnel.
- b. Assign personnel to projects on an as-needed basis in coordination with SANBAG's Resident Engineer.
- c. Administer personal leave, subject to approval of SANBAG's Resident Engineer.
- d. Prepare monthly reports for delivery to the SANBAG project manager.
- e. Provide direction, administration, and responsibility for Materials Certification per Caltrans Construction Manual, Section 8-01.

Material testing personnel will be certified by a California Registered Civil Engineer as being experienced and competent in the testing procedures required for the work involved. Independent certification of testing procedures may be performed at the discretion of the SANBAG Construction Manager.

10. Materials Technicians

CONSULTANT personnel provided under this contract will have a variety of skills and experience appropriate for the level of tasks to be assigned. Field personnel will have a minimum of two years experience in conducting material sampling and testing of the type required for the projects involved and will possess the following additional capabilities:

- a. Have the ability to establish specific locations for appropriate tests when construction contract administration personnel are not available.
- b. Be familiar with construction practices and be fully aware of construction activities at the project site.
- c. Have knowledge of and comply with safety and health regulations and requirements applicable to the project.

Specific qualifications for technicians are as follows:

CONSTRUCTION TECHNICIAN I

Performs a variety of semi-skilled activities.

*Examples of duties assigned to this classification are:*

- Conducting quality control tests such as soil densities, sieve analysis tests, operation scales and inspecting spread operations.
- Sampling and transporting produced construction materials from point of application or production to testing laboratory.

*Knowledge and Skills Required*

- Knowledge of tools, equipment and vehicles utilized in construction.
- Knowledge of standard equipment and materials used for the sampling and testing of construction material.
- Knowledge of basic mathematics used in the computation of a variety of construction items.
- Knowledge of record keeping, preparing of documents and reports.

TECHNICIAN II

Performs a variety of skilled activities

*Examples of duties assigned to this classification are:*

- Inspecting minor construction items, sampling and inspection of steel reinforcement, sampling and inspection of concrete placing operation.
- Collect and analyze soil samples of construction materials to determine compaction and moisture content.

- Inspection and sampling of all phases of asphalt concrete and PCC paving operation, including plant inspection.
- Confers with construction engineers and contractors regarding construction in progress and is conformance to specifications and construction plans.
- Answers questions and resolves problems.
- Inspects construction in progress to ensure conformance with specification, agreements, and established requirements.
- Keeps daily diary of work progress.
- Prepares reports on all field inspections and submits project quantities on a daily basis.
- Keeps accurate documentation for force accounts and possible claims.

*Knowledge and Skill Required:*

- All knowledge and skills required of lower classification.
- Knowledge of currently accepted methods, procedures and techniques used in highway construction inspection, survey, materials testing, and quality control equipment.
- Skill in interpersonal relations as applied to contact with contractors, representatives of other governmental jurisdictions, and other SANBAG staff.

### TECHNICIAN III

Exercise considerable independent judgment within general Greenbook and Caltrans standards and guidelines.

*Examples of duties assigned to this classification are:*

- Inspect project construction on an ongoing basis to assure compliance with contract and in accordance with State and local standards.
- Perform a variety of structural material tests and inspections.
- Reviews construction plans and verified that these are in accordance with designated specifications and other requirements.
- Participates in the preparation of completed work estimates, to calculate compensation due contractor.
- Examines and verifies numeric data and material specifications on project cost source documents, utilizing geometry and trigonometry calculations.
- Supervises all work activities involved in construction projects, laboratory, and quality control work.
- Recommends approval of proposed project changes.

*Knowledge and Skills Required:*

- All knowledge and skills required of lower classifications.
- Knowledge of the principles and practices of Civil Engineering as applied to the construction.
- Skill in analyzing and evaluating a wide variety of highly technical engineering data, including construction plans, field survey and quality control documents.
- Skill in interpreting and implementing Caltrans standards, policies, procedures and regulations.

- Skill in interpersonal relations, as applied to contacts with contractors, representatives of other governmental jurisdictions, and other SANBAG/Caltrans staff.

11. Construction Surveying Project Manager

Minimum qualifications for the position of Survey Project Manager shall be as follows:

- Four (4) years project management experience on similar construction projects.
- Licensed Surveyor or pre-January 1, 1982, Registered Professional Engineer in the State of California.
- Reasonably accessible to the Resident Engineer and SANBAG at all times during normal working hours as specified in this Scope of Services.

The Construction Survey Project Manager will be responsible for:

- Review, monitor, train, and provide general direction for CONSULTANT survey personnel.
- Assign personnel to projects on an as-needed basis.
- Administer personal leave, subject to approval of the Resident Engineer.
- Prepare monthly reports for delivery to the SANBAG project manager.

12. Field Party Chiefs

• Minimum qualifications for the position of Party Chief shall meet at least one of the following licensing requirements:

1. A licensed Land Surveyor in the State of California.
2. A pre-January 1, 1982, Registered Professional Civil Engineer in the State of California
3. An experienced surveyor who serves as chief under the direction or supervision of a person who is a licensed Land Surveyor or pre-January 1, 1982, Registered Professional Civil Engineer in the State of California. The direction or supervision shall place the supervisor in "responsible charge" of the work. "Responsible Charge" is defined in Chapter 15 of the Business and Professions Code (the Land Surveyor's Act) and Title 16, Chapter 5, of the California Administrative Code (regulations adopted by the Board of Registration for Professional Engineers and Land Surveyors).
4. Two (2) year's survey experience on similar construction projects.
5. Thorough knowledge of construction survey practices and the ability to read and interpret plans and specifications.
6. Ability to make effective decisions concerning field problems and work in progress.
7. Familiarity with typical coordinate geometry computer programs.

8. Familiarity with safety requirements for surveying near traffic.

Under the direction of the Resident Engineer, the Party Chiefs will assume the following responsibilities:

- Perform construction staking services for project construction.
- Administer day to day activities for the survey party.
- Perform analytical survey calculations for items such as grading, horizontal and vertical control, right of way, and minor in-field design.
- Maintain continuous communication with the Resident Engineer, field personnel, and construction administration staff.

### 13. Survey Crews

Minimum qualifications for survey crew members shall be as follows:

- One (1) year survey experience on similar construction projects.
- Fundamental knowledge of construction survey practices and the ability to read and interpret plans and specifications.
- Ability to assist Party Chiefs and office personnel in all required surveying work.
- One survey crew member must have the ability to assume temporary leadership of the survey party in the absence of the Party Chief.

Under the direction of the Resident Engineer and the Party Chief, the survey crew members will assume the following responsibilities:

- Perform basic calculations to support construction staking.
- Maintain continuous communication with Party Chiefs and office personnel.

### 14. Public Outreach Liaison

Minimum qualifications for the Public Outreach Liaison shall be as follows:

- Two (2) year's experience providing public outreach services on similar construction projects.
- Ability to speak and write proficiently in English and Spanish.

Under the direction of SANBAG's Public Information Office, the Public Outreach Liaison will assume the following responsibilities:

- Creation of a project facts sheet in both English and Spanish.
- Coordination of a local business outreach meeting prior to construction.
- Coordination of a ground-breaking ceremony prior to construction.
- Coordination of a ribbon cutting ceremony at completion of construction.
- Creation and dissemination of occasional traffic advisories (as needed).
- Refinement and maintenance of the project database.
- Respond to public inquiries received via e-mail or by telephone (as needed).
- Update/maintain project web page.

- Create and disseminate an update on the project to residents and businesses (as needed).
- Create a Powerpoint type presentation for updating Ontario City Council and SANBAG Board or Committees.
- Attendance at construction meetings (as needed).

**ATTACHMENT “B”**

**Cost Proposal**

**By and between**

**San Bernardino Associated Governments/  
San Bernardino County Transportation Authority**

**And**

**Nolte Associates, Inc.**

**To**

**Provide Construction Management, Material Testing and  
Construction Survey Services**

**For**

**North Milliken Avenue Grade Separation Project**

**Within the City of Ontario**

**Contract No. 10184**

## **Attachment B – Negotiated Cost Proposal Terms and Conditions**

1. CONSULTANT shall provide independently audited documentation acceptable to AUTHORITY to substantiate all overhead rates used in the cost proposal, including those of subconsultant firms (reference Addendum No. 1). The maximum, audited fixed overhead rate for this contract is 150% and will not be subject to adjustment.
2. At the discretion of AUTHORITY, individual Task Orders will be issued for any or all portions of work under the contract. Approved task orders will indicate the start and end dates for performance, the approved not-to-exceed budget amount, the approved scope of work for each task(s) and approved staffing. The Consultant will be responsible for managing time, budget and scope under an approved task order and shall notify SANBAG of any changes prior to performing any work outside the terms established in the task order.
3. Escalation rates for direct costs will be negotiated with AUTHORITY on an annual basis. Under no circumstance will AUTHORITY pay for escalation of labor rates that have not been previously approved in writing and which exceed current Employment Cost Index. All salary increases will be subject to approval of the AUTHORITY and current prevailing wage requirements.
4. Subconsultant WEC's and LEH direct labor rates are not subject to any escalation adjustment at any time throughout the duration of the contract.
5. Percentage profits for CONSULTANT and all Subconsultants are fixed at 9.5% for the entire duration of the contract.
6. Vehicles shall be invoiced as other direct costs (ODCs) at an hourly rate of not more than \$6.35 per hour. The number of hours of vehicle usage shall match the number of hours worked by the employee operating the vehicle but in no case shall the invoiced cost of any vehicle exceed \$1,100 per month. Vehicle cost shall not be invoiced to AUTHORITY until such time as Consultant or Subconsultant has mobilized to project site. No percentage profit markup shall be applied to any ODC. The following six (6) positions are authorized to bill for vehicle cost (Total cost not to exceed \$156,000.00): Senior Resident Engineer/Structural Rep (1); Structural Inspector/Railroad Coordinator (1); Structure/Roadway Inspector (1); Structural Bridge Inspector (1); Office Engineer when conducting Public Outreach activities outside the office (1); Soils/Materials Technician (1).
7. As a SANBAG Option, Agreement includes a not-to-exceed amount of \$138,000.00 for CONSULTANT provided complete project office complex including but limited to office space, set-up, office equipment, maintenance, furniture, computers, printers, copiers, plotters, fax machines, phones, utilities, meeting room, water, toilets, janitorial, security and other appurtenances, etc. Office complex to be utilized for a maximum of 26 months. If requested by AUTHORITY Task Order shall be issued to provide office complex. Cost will be billed as ODC.



## ATTACHMENT 'B'

Nolte Associates

### San Bernardino Associated Governments (SANBAG)

North Milliken Avenue Grade Separation  
Construction Management and Inspection Services

April 9, 2010

#### I. DIRECT LABOR COSTS

Staff Classification	Initial Direct Hourly Rate	Hours	Total
Project Manager	\$94.86	511	\$48,473.46
Office Engineer/Public Outreach/Admin	\$42.91	4,680	\$200,818.80
Structures /Roadway Inspector	\$54.50	4,280	\$233,260.00
Structural Bridge Inspector	\$52.88	3,120	\$164,985.60
Administrative Support Services	\$30.30	1,660	\$50,298.00
Survey Analyst	\$28.11	560	\$15,741.60
Other 7	\$0.00	0	\$0.00
Other 8	\$0.00	0	\$0.00
Other 9	\$0.00	0	\$0.00
Other 10	\$0.00	0	\$0.00

<b>Subtotal Hours &amp; Direct Labor Costs</b>	14,811	<u><b>\$713,577.46</b></u>
<b>Anticipated Salary Increases</b>		<u><b>\$64,692.92</b></u>
<b>Total Direct Labor Costs</b>		<u><b>\$778,270.38</b></u> (1)

#### II. INDIRECT COSTS

**INDIRECT RATE**      150.00 % x      \$ 778,270.38      =      Subtotal      **\$1,167,405.56**      (2)

Subtotal (1)

#### III. FEE (PROFIT)

9.5 % x      \$ 1,945,675.94      =      Subtotal      **\$184,839.21**      (3)

Total (1) + (2)

#### IV. OTHER DIRECT COSTS

Item	Amount
Per Diem	\$0.00
Car Mileage	\$0.00
Travel	\$0.00
Computer Charges	\$0.00
Photocopies (Black & White)	\$0.00
Photocopies (Color))	\$0.00
Commercial Printing	\$0.00
Mail/Courier	\$0.00
Photographs	\$0.00
Intersection Traffic Counts	\$0.00
Ramp/Segment Counts	\$0.00
Corridor Speed Surveys	\$0.00
Vehicles	\$81,400.00
Misc. Office Supplies/Postage/etc.	\$22,000.00
Utilities/DSL/Phone lines	\$15,000.00
a	\$0.00
b	\$0.00

Subtotal \$ \$118,400.00 (4)

**V. SUBCONSULTANTS COST**

WEC	\$1,610,304.20
Inland Foundation	\$456,390.00
L.E.H. & Associates	\$258,062.00
<Sub-Consultant No. 4>	
<Sub-Consultant No. 5>	
<Sub-Consultant No. 6>	
<Sub-Consultant No. 7>	
<Sub-Consultant No. 8>	
<Sub-Consultant No. 9>	
<Sub-Consultant No. 10>	
<Sub-Consultant No. 11>	
<Sub-Consultant No. 12>	
<Sub-Consultant No. 13>	
<Sub-Consultant No. 14>	
<Sub-Consultant No. 15>	

Subtotal \$ \$2,324,756.20 (5)

**VI. TOTAL AMOUNT**

\$4,573,671 (Total 1-5)

**WEC**

**North Milliken Avenue Grade Separation  
Construction Management and Inspection Services**

**April 9, 2010**

Staff Classification	Initial Direct Hourly Rate	Hours	Total
Senior RE/Structures Representative	\$79.40	4,760	\$377,944.00
Structures Inspector/UPRR Coordinator	\$47.35	4,000	\$189,400.00
other 3	\$0.00	0	\$0.00
other 4	\$0.00	0	\$0.00
Other 5	\$0.00	0	\$0.00
Other 6	\$0.00	0	\$0.00
Other 7	\$0.00	0	\$0.00
Other 8	\$0.00	0	\$0.00
Other 9	\$0.00	0	\$0.00
Other 10	\$0.00	0	\$0.00

Item	Amount
Vehicles	\$57,200.00
b	\$0.00
c	\$0.00
d	\$0.00
e	\$0.00

<b>V. TOTAL AMOUNT</b>	<u>\$1,610,304</u>	(Total 1-4)
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**L.E.H. & Associates**

**North Milliken Avenue Grade Separation  
Construction Management and Inspection Services**

**April 9, 2010**

Staff Classification	Initial Direct Hourly Rate	Hours	Total
Chief of Parties	\$57.41	148	\$8,496.68
Instrument Man	\$48.08	1,000	\$48,080.00
Chainman/Rodman	\$45.89	1,000	\$45,890.00
Other 5	\$0.00	0	\$0.00
Other 6	\$0.00	0	\$0.00
Other 7	\$0.00	0	\$0.00
Other 8	\$0.00	0	\$0.00
Other 9	\$0.00	0	\$0.00
Other 10	\$0.00	0	\$0.00

Subtotal Hours & Direct Labor Costs	2,148	<u>\$102,466.68</u>	
Anticipated Salary Increases		<u>\$0.00</u>	
Total Direct Labor Costs		<u>\$102,466.68</u>	(1)

<b>INDIRECT RATE</b>	<u>130.00</u> %	x	\$ <u>102,466.68</u>	=	Subtotal	<u>\$133,206.68</u>	(2)
			Subtotal (1)				

<u>9.5 %</u>	x	\$ <u>235,673.36</u>	=	Subtotal	<u>\$22,388.97</u>	(3)
		Total (1) + (2)				

Item	Amount
0	\$0.00
0	\$0.00
b	\$0.00
c	\$0.00
d	\$0.00
e	\$0.00

Subtotal \$	<u>\$0.00</u>	(4)
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**\$258,062** (Total 1-4)

## ATTACHMENT 'B'

Inland Foundation

### San Bernardino Associated Governments (SANBAG)

North Milliken Avenue Grade Separation  
Construction Management and Inspection Services

April 9, 2010

#### I. DIRECT LABOR COSTS

Staff Classification	Initial Direct Hourly Rate	Hours	Total
Project Engineer	\$45.89	360	\$16,520.40
Technician III	\$37.61	360	\$13,539.60
Technician III	\$37.61	2,636	\$99,139.96
Laboratory Tech/Technician II	\$37.61	426	\$16,021.86
Word Processing/Drafting	\$20.95	230	\$4,818.50
Batch Plant Inspector	\$21.25	0	\$0.00

Subtotal Hours & Direct Labor Costs	4,076	<u>\$150,040.32</u>	
Anticipated Salary Increases		<u>\$11,033.50</u>	
Total Direct Labor Costs		<u>\$161,073.82</u>	(1)

#### II. INDIRECT COSTS

INDIRECT RATE 140.00 % x \$ 161,073.82 = Subtotal \$225,503.35 (2)  
Subtotal (1)

#### III. FEE (PROFIT)

9.5 % x \$ 386,577.18 = Subtotal \$36,724.83 (3)  
Total (1) + (2)

#### IV. OTHER DIRECT COSTS

Item	Amount
Laboratory Testing	\$15,487.56
Vehicles	\$17,600.00
b	\$0.00
c	\$0.00
d	\$0.00
e	\$0.00

Subtotal \$ \$33,087.56 (4)

#### V. TOTAL AMOUNT

\$456,390 (Total 1-4)

**Attachment "B"**  
**San Bernardino Associated Governments (SANBAG)**  
 North Milliken Grade Separation  
 Construction Management and Inspection Services

Estimated Office Costs					
Item	SF	\$ per sf		Monthly	Totals
Office rent	1800	\$1.50	Year 1	\$2,700.00	\$32,400.00
		\$1.55	Year 2	\$2,781.00	\$33,372.00
<b>Subtotal Rent</b>					<b>\$65,772.00</b>
Total Equipment (Server + equip, copier/scanner/printer, fax)					\$30,586.00
Total Maintenance					\$2,743.49
Total Furniture					\$0.00
Total Setup Costs (Labor)					\$20,900.00
Total Recurring Costs (Phones, connectivity, alarm, utilities)					\$25,163.16
<b>Subtotal Other Costs</b>					<b>\$79,392.65</b>
<b>GRAND TOTAL</b>					<b>\$137,906.42</b>
			Total/26 months	\$5,304.09	
			Say Monthly charge =	\$5,300.00	

***Minute Action***

AGENDA ITEM: 13

**Date:** May 12, 2010

**Subject:** I-215 Bi-County High Occupancy Vehicle (HOV) Lane Gap Closure Project

- Recommendation:** \*
1. Approve Cooperative Agreement C10211 with Riverside County Transportation Commission (RCTC) for the Plans, Specifications, and Estimates (PS&E) and Right-of-Way (ROW) phases of the I-215 Bi-County HOV Gap Closure Project. SANBAG's contribution is Not to Exceed \$21,056,000; RCTC's contribution is Not to Exceed \$2,185,000 for a total amount of \$23,241,000.
  2. Approve Amendment No. 1 to Cooperative Agreement Amendment C09145 with Caltrans for Preliminary Engineering (PE) of the I-215 Bi-County HOV Gap Closure Project for an amount not to exceed \$11,000,000.
  3. Approve budget amendment to increase the FY 2009/2010 budget for TN 83910000 in the amount of \$520,000 for a revised total Fiscal Year Project budget in the amount of \$3,259,011 as identified in the Financial Impact Section.

**Background:** **Recommendation 1:** On February 4, 2009, the SANBAG Board of Directors approved a cooperative agreement (C09145) with RCTC for the Project Approval and Environmental Document (PA/ED) phase of the I-215 Bi-County HOV gap closure project. This cooperative agreement formalized the partnership between SANBAG and RCTC and established each agency's roles with regards to cost sharing and project development responsibilities. At that time, both agencies agreed that their share of project development costs for the HOV project should

*Approved  
Board of Directors*

*Date:* \_\_\_\_\_

*Moved:* \_\_\_\_\_ *Second:* \_\_\_\_\_

*In Favor:* \_\_\_\_\_ *Opposed:* \_\_\_\_\_ *Abstained:* \_\_\_\_\_

*Witnessed:* \_\_\_\_\_

reflect the ratio of construction costs within each agency's respective jurisdiction. Based on the most current estimates, the San Bernardino County portion of the project is approximately 83% of the total project cost and the Riverside County portion is approximately 17%. This agreement is based on a total PS&E programmed amount of \$13,029,000 which includes contingency costs. SANBAG's share of \$10,844,000 will be funded through the federal Congestion Mitigation and Air Quality Improvement (CMAQ) program, while RCTC's share of \$2,185,000 will be funded from the State Transportation Improvement Program (STIP). ROW costs, including utility relocation are all within the San Bernardino County portion of the project. As such, ROW costs will be SANBAG's responsibility.

**Recommendation 2:** On December 2, 2009, the SANBAG Board of Directors approved recommendation by SANBAG Staff to negotiate with Caltrans to provide professional engineering services for the PS&E phase of the I-215 Bi-County HOV lane gap closure project. Since then, SANBAG staff has negotiated a work plan, schedule, and cost for PS&E professional services with Caltrans. In lieu of preparing a new cooperative agreement for the PS&E phase, Caltrans and SANBAG staff are recommending that the existing Project Approval and Environmental Document (PA/ED) Cooperative Agreement C10945 be amended to include the PS&E phase.

SANBAG and Caltrans staff was able to agree on a cost of \$11,000,000 for PS&E professional services. Caltrans has also committed to a schedule to complete this phase of the project by March 2012. PS&E professional services include final roadway and structural design, utility coordination, surveying, geotechnical studies, preliminary right-of-way design, permits and agreements, and environmental mitigation. During discussions between Caltrans and SANBAG staff, Caltrans management has assured SANBAG that Caltrans has the resources to provide these services and complete the project within budget and on time. Caltrans has also agreed to provide monthly project status report that would allow SANBAG to monitor progress and expenditures.

**Recommendation 3:** Staff recommends that the Board authorizes a budget amendment under Task Number TN 83910000 to include budget for these agreements. The PS&E phase will be funded using federal CMAQ funds and STIP funds (RCTC).

**Financial Impact:** This item is not consistent with the FY 2009/2010 budget. A budget amendment is included in this item to increase the FY 2009/2010 budget for TN 83910000 in the amount of \$520,000 for a revised total Fiscal Year Project budget in the amount of \$3,259,011. The FY 2009/2010 budget amendment would include the addition of \$460,200 of CMAQ funds and \$59,800 of STIP funds (RCTC).



Board Agenda Item  
May 12, 2010  
Page 3

***Reviewed By:*** This item was reviewed and unanimously recommended for approval by the Major Projects Committee on April 15, 2010. SANBAG Counsel has reviewed and approved the agreements as to form.

***Responsible Staff:*** Garry Cohoe, Director of Freeway Construction

SANBAG Contract No. C10211  
by and between  
San Bernardino County Transportation Authority  
and  
Riverside County Transportation Commission  
for

I-215 HOV Gap Closure Project  
Plans, Estimates, and Specifications (PS&E) and Right of Way (ROW)

**FOR ACCOUNTING PURPOSES ONLY**

<input type="checkbox"/> Payable	Vendor Contract # <u>10-31-078-00</u>	Retention:	<input checked="" type="checkbox"/> Original
<input checked="" type="checkbox"/> Receivable	Vendor ID <u>RCTC</u>	<input type="checkbox"/> Yes ____ % <input checked="" type="checkbox"/> No	<input type="checkbox"/> Amendment

Notes:

Original Contract: <b>\$ <u>2,185,000</u></b>	Previous Amendments <b>\$ ____</b>
	Previous Amendments <b>\$ ____</b>
	Contingency / Allowance Total:
Contingency / Allowance Amount <b>\$ <u>0</u></b>	Current Amendment: <b>\$ ____</b>
	Current Amendment Contingency / Allowance: <b>\$ ____</b>

Contingency Amount requires specific authorization by Task Manager prior to release.

**Contract TOTAL ► \$ 2,185,000**

\* Funding sources remain as stated on this document unless and until amended by proper authority. Funding sources are those which are ultimately responsible for the expenditure.

▼ Include funding allocation for the original contract or the amendment

Main Task/Project	Level 1	Level 2	Cost Code/Object	Grant ID/Supplement	Funding Sources/ Fund Type (Measure I, STP, CMAQ, etc.)	Amounts for Contract Total or Current Amendment Amt
<u>0839</u>	<u>610</u>	<u>000</u>	_____	_____	<u>RCTC</u>	<b>\$ <u>2,185,000</u></b>
_____	_____	_____	_____	_____	_____	<b>\$ ____</b>

Original Board Approved Contract Date: <u>5/12/10</u>	Contract Start: <u>5/12/10</u>	Contract End: <u>12/31/12</u>
New Amend. Approval (Board) Date: _____	Amend. Start: _____	Amend. End: _____

Allocate the **Total Contract Amount** or **Current Amendment** amount between **Approved Budget Authority** in the current year and **Future Fiscal Year(s) Unbudgeted Obligation**.

Approved Budget Authority ►	Fiscal Year: <u>09/10</u> <b>\$ <u>59,800</u></b>	Future Fiscal Year(s) – Unbudgeted Obligation ►	<b>\$ <u>2,125,200</u></b>
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- ☐ Budget authority for this contract currently exists in Task No. 0839 (C-Task may be used here.).
- ☒ A budget amendment is required. A Budget Amendment Request is attached.

**CONTRACT MANAGEMENT**

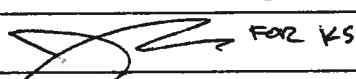
Check all applicable boxes:


- ☒ Intergovernmental     ☐ Private     ☐ Federal Funds     ☐ State/Local Funds  
☐ Disadvantaged Business Enterprise (DBE)     ☐ Underutilized DBE (UDBE)

**Task Manager: Garry Cohoe**

**Contract Manager: Khalil Saba**

 5/5/10  
Task Manager Signature     Date

 5/5/10  
Contract Manager Signature     Date

 5/5/10  
Chief Financial Officer Signature     Date

**COOPERATIVE AGREEMENT NO. C10211**  
**BETWEEN**  
**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**  
**AND**  
**RIVERSIDE COUNTY TRANSPORTATION COMMISSION**  
**FOR THE**  
**PLANS, SPECIFICATIONS, AND ESTIMATES AND RIGHT OF WAY PHASES**  
**OF THE**  
**I-215 BI COUNTY HOV GAP CLOSURE PROJECT**

This Agreement is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_ 2010, by and between San Bernardino County Transportation Authority, hereinafter referred to as "AUTHORITY" and the Riverside County Transportation Commission, hereinafter referred to as "COMMISSION", and sometimes collectively hereinafter referred to as "PARTIES".

**WITNESSETH**

WHEREAS, the PARTIES desire to proceed with project development and construction of the I-215 Bi-County HOV Gap Closure Project between the I-215/SR-60/SR-91 and I-215/Orange Show Road Interchanges in the counties of Riverside and San Bernardino, hereinafter referred to as the "PROJECT"; and

WHEREAS, the scope of the PROJECT is to add an HOV lane in each direction by reconstructing the inside and outside shoulders and restriping the lanes resulting in a varying width inside shoulder, one HOV lane with no buffer, three mixed flow lanes, and a varying width outside shoulder in each direction of I-215, as depicted in Figure 1 of Agreement C09145; and

WHEREAS, the PROJECT is located in San Bernardino County and partially within Riverside County and will be of mutual benefit to the AUTHORITY and COMMISSION; and

WHEREAS, the PARTIES entered into Project Approval and Environmental Document (PA/ED) Agreement C09145 on February 4, 2009, said Agreement defining the responsibilities and obligations of the AUTHORITY and COMMISSION during the PA/ED phase; and

WHEREAS, the PARTIES desire to set forth responsibilities and obligations of AUTHORITY and COMMISSION during the Plans, Specifications, and Estimates phase, hereinafter referred to as "PS&E" and during the Right of Way phase, hereinafter referred to as "ROW", for the PROJECT; and

WHEREAS, COMMISSION intends to utilize the State Transportation Improvement Program ("STIP") funding source to fund its payment obligations under this Agreement.

NOW, THEREFORE, AUTHORITY and COMMISSION agree to the following:

## **SECTION I Administration**

- a) The scope of this Agreement strictly applies to the work necessary for the PS&E and ROW phases of the PROJECT. Any work beyond what is necessary for PS&E and ROW shall be part of an independent, separate agreement between the PARTIES.
- b) The COMMISSION and AUTHORITY mutually agree that AUTHORITY shall be the lead agency on the PROJECT for PS&E and ROW.
- c) The PARTIES agree it would be to the benefit of the PARTIES to enter into negotiations with the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE," to provide professional services for PS&E and ROW.
- d) AUTHORITY shall enter into a Cooperative Agreement with STATE for the PS&E and ROW phase of the project. AUTHORITY shall comply with all requirements set forth in the Cooperative Agreement to be entered into with Caltrans.
- e) AUTHORITY shall be the responsible agency for procuring professional services from the STATE.
- f) AUTHORITY shall render project management services and provide engineering support services utilizing AUTHORITY's available staff which will be supplemented with the AUTHORITY'S consultant staff. Any consultant contract for services to be reimbursed with COMMISSION funds to be provided pursuant to this Agreement shall include COMMISSION as an indemnified party by the consultant and as an additional insured. Such coverage shall be to the same extent as provided to AUTHORITY.
- g) COMMISSION shall designate a Project Manager to represent COMMISSION, and AUTHORITY shall designate a Project Manager to represent AUTHORITY through whom all communications between the two agencies shall be channeled.
- h) AUTHORITY shall coordinate and conduct project development team meetings on a monthly basis to provide the COMMISSION with a PROJECT update that includes schedule updates, cost updates, scope updates, status of action items, and status of issues/concerns.
- i) COMMISSION agrees its Project Manager shall be responsible for preparing COMMISSION staff reports for COMMISSION Board consideration.

- j) AUTHORITY shall provide all PROJECT submittals to the COMMISSION at appropriate stages of PROJECT development for review and comment.
- k) COMMISSION's Project Manager shall be responsible for distributing PROJECT submittals for review and comment by the COMMISSION.
- l) COMMISSION's Project Manager shall transmit all review comments to AUTHORITY within ten (10) working days after the submittal is received by the COMMISSION. If comments are not provided by the tenth (10th) working day, AUTHORITY will deem the relevant submittals reviewed and approved by COMMISSION and shall notify the COMMISSION of its intention to move forward with PROJECT as pertains to the relevant submittal(s) only. The COMMISSION agrees the submittals may be in the form of plans, specifications, estimates, reports, studies, environmental documents or other PROJECT related submittals requiring COMMISSION review and comment.

## **SECTION II Financial Responsibilities**

- a) The total PROJECT cost is estimated at \$177,695,000. This estimate includes project support costs and construction and ROW capital costs.
- b) The PA/ED phase of the PROJECT was estimated to cost \$6,120,000 and was the monetary obligation amount in Agreement C09145.
- c) The PS&E phase of the PROJECT is estimated to cost \$13,029,000 and shall be the monetary obligation in this Agreement.
- d) The ROW phase of the PROJECT is estimated to cost \$10,212,000.
- e) All costs incurred for PROJECT PS&E shall be borne 83.23% by AUTHORITY and 16.77% by COMMISSION, regardless of what the ultimate project cost within each county may be. (Refer to **Table 1: I-215 Bi County HOV Gap Closure PS&E and ROW Project Cost Estimate and Cost Share Breakdown between AUTHORITY and COMMISSION**).
- f) The AUTHORITY shall be responsible for one hundred percent (100%) of all ROW costs for the PROJECT.
- g) The cost estimate for PS&E and ROW (refer to Table 1) is an "estimate" to be used for budgetary and planning purposes and it is agreed that there is a potential for cost increases or decreases.
- h) AUTHORITY and COMMISSION shall be responsible for their own administrative and management costs including, but not limited to, costs attributed to the preparation of invoices, billings and payments.

- i) **AUTHORITY** shall be responsible for **PROJECT** contract administration.
- j) **AUTHORITY** and **COMMISSION** agree to independently develop their funding plan for their share of **PROJECT** costs, execute funding agreements, and secure funds.
- k) **AUTHORITY** shall bill the **COMMISSION** on a monthly basis for reimbursement of **PS&E PROJECT** expenditures. The bill to the **COMMISSION** shall contain copies of invoices paid by **AUTHORITY** and the invoices shall contain supporting documentation for expenditures associated with labor, other direct costs, and subconsultants.
- l) **COMMISSION** agrees to pay all approved charges of **AUTHORITY**'s invoice within 45 days of receipt of invoice.
- m) **COMMISSION**'s ability to fund its payment obligations under this Agreement utilizing **STIP** funding is subject to and contingent upon California Transportation Commission ("CTC") approval of **COMMISSION**'s proposed allocation of **STIP** funds for the **PROJECT PS&E**. If such allocation is not approved, **Commission** shall utilize an alternate source of funding to meet its obligations hereunder.
- n) The monetary obligation identified in this Agreement and the attached Table 1, and agreed to by **AUTHORITY** and **COMMISSION**, is a not to exceed obligation and neither **AUTHORITY** nor the **COMMISSION** may exceed this obligation unless both **PARTIES** obtain the necessary budget amendment authorization from their respective governing bodies, and a written amendment to this Agreement is executed by the **PARTIES**.

### **SECTION III PS&E and ROW**

- a) **AUTHORITY** shall prepare final engineering plans and specifications in accordance with the Caltrans Highway Design Manual (HDM) and Caltrans Project Development Procedures Manual (PDPM). The engineering plans and specifications shall be submitted to the **COMMISSION** for **COMMISSION**'s review and concurrence at appropriate stages of development.
- b) **AUTHORITY** and **COMMISSION** agree the deliverables for the **PS&E** and **ROW** phase of the **PROJECT** are as follows,
  - i) Roadway Design Plans, Special Provisions, and Cost Estimates
  - ii) Structural Design Plans, Special Provisions, and Cost Estimates
  - iii) Right of Way Plans, Appraisal Maps, and Legal Description and Plats
  - iv) Resident Engineer File
- c) **COMMISSION** shall cooperate fully with **AUTHORITY** in order to complete the **PS&E** and **ROW** phases of this **PROJECT**.

#### **SECTION IV Miscellaneous**

- a) Notices – Any notices, requests, or demands made between the Parties pursuant to this Agreement shall be addressed to the other Party at the address set forth below. Either Party may change its address by notifying the other Party of the change of address.
  - i) Riverside County Transportation Commission  
  
Mailing Address  
P.O. Box 12008  
Riverside, CA 92502-2208  
Attention: Marlin Feenstra, Director of Project Delivery  
  
Physical Address  
4080 Lemon Street, 3<sup>rd</sup> Floor  
Riverside, CA 92501  
Attention: Marlin Feenstra, Director of Project Delivery
  - ii) San Bernardino Associated Governments  
1170 West 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor  
San Bernardino, CA 92410  
Attention: Garry Cohoe, Director of Freeway Construction
- b) Severability – If any term, provision, covenant, or condition of this Agreement is held to be invalid, void, or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- c) Assignment – Neither this Agreement, nor any of the PARTIES rights, obligations, duties, or authority hereunder may be assigned in whole or in part by either Party without the prior written consent of the other Party in its sole, and absolute, discretion. Any such attempt of assignment shall be deemed void and of no force and effect.
- d) Governing Law – The laws of the State of California and applicable local and federal laws, regulations and guidelines shall govern this Agreement.
- e) Waiver – No waiver of any default shall constitute a waiver of any other default whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- f) Attorneys Fees – If any legal action is instituted to enforce or declare any Party's rights hereunder, each Party, including the prevailing Party, must bear its own costs and

attorneys' fees. This paragraph shall not apply to those costs and attorneys fees directly arising from any third party legal action against a Party hereto and payable under the indemnification provisions of this Agreement.

- g) Neither COMMISSION nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by AUTHORITY under or in connection with any work, authority or jurisdiction conferred upon AUTHORITY and arising under this Agreement. It is understood and agreed that AUTHORITY shall fully defend, indemnify and save harmless COMMISSION and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under this Agreement or occurring by reason of anything done or omitted to be done by AUTHORITY under this Agreement.
- h) Neither AUTHORITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by COMMISSION under or in connection with any work, authority or jurisdiction conferred upon COMMISSION and arising under this Agreement. It is understood and agreed that COMMISSION shall fully defend, indemnify and save harmless AUTHORITY and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under this Agreement or occurring by reason of anything done or omitted to be done by COMMISSION under this Agreement.
- i) In the event AUTHORITY and the COMMISSION are found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this Agreement, the AUTHORITY and/or the COMMISSION shall indemnify the other to the extent of its comparative fault.
- j) Termination
  - i) Termination for Cause
    - (1) Any Party to this Agreement may declare a breach hereof by serving written notice describing the nature of the breach to the other Party. The Party alleged to have breached the Agreement shall be afforded thirty (30) days from service of the notice of breach to take whatever steps necessary to cure the breach. If the breach is not cured within the time parameters set forth herein, this Agreement may be terminated as to that Party deemed to be in breach of this Agreement.
  - ii) Termination for Convenience
    - (1) In the event either Party terminates the agreement for convenience, the Party terminating the agreement for convenience shall furnish a thirty (30) day written notice to the other Party.
  - iii) Termination Costs
    - (1) If COMMISSION terminates this Agreement, COMMISSION shall pay to AUTHORITY all approved costs incurred by AUTHORITY, including



AUTHORITY's share paid to date, and costs to be incurred as a result of terminating the agreement. If AUTHORITY terminates this Agreement, AUTHORITY shall pay to COMMISSION all costs incurred by COMMISSION, including costs to be incurred as a result of terminating the agreement. Notwithstanding the foregoing, if this agreement is terminated for cause, the non-breaching party shall not be liable for any costs incurred as a result of such termination.

- k) In the event of any conflict between the Agreement and Exhibit(s), Table(s), Figure(s) attached to the Agreement and incorporated by reference, the Agreement shall take precedence over the Exhibit(s), Table(s), and Figure(s).
- l) Any amendment to this Agreement, amendment to the consultant contract(s), or significant change in the PROJECT scope or cost must be agreed to by both PARTIES in writing.
- m) This Agreement shall terminate upon completion of PROJECT PS&E and ROW obligations of AUTHORITY and the delivery of required PROJECT documents to the COMMISSION, or on December 31, 2012, whichever is earlier in time, except that the indemnification provisions shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any claims arising out of PROJECT be asserted against one of the PARTIES, the PARTIES agree to extend the fixed termination date of this Agreement, until such time as the claims are settled, dismissed or paid.
- n) There are no third party beneficiaries, and this agreement is not intended, and shall not be construed to be for the benefit of, or be enforceable by, any other person or entity whatsoever.

IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be entered into as of the date set forth above.

**"COMMISSION"**

Riverside County Transportation  
Commission

**"AUTHORITY"**

San Bernardino County Transportation  
Authority

By: \_\_\_\_\_  
Anne Mayer  
Executive Director  
RCTC

By: \_\_\_\_\_  
Paul M. Eaton, President  
SANBAG Board of Directors

Attest: \_\_\_\_\_  
Jennifer Harmon  
Clerk of the Board

Attest: \_\_\_\_\_  
Vicki Watson  
Board Secretary

Approved As To Form And Procedure:

Approved As To Form And Procedure:

By: \_\_\_\_\_  
BB&K  
Legal Counsel

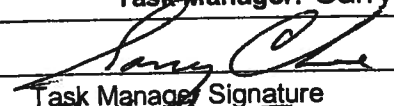
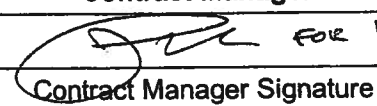

By: \_\_\_\_\_  
Jean-Rene Basle  
AUTHORITY's Counsel

**Table 1**  
**I-215 Bi County HOV Gap Closure PS&E and ROW Project Cost Estimate and Cost Share Breakdown Between AUTHORITY and COMMISSION**

Project Phase	Total Cost	SANBAG Contribution		RCTC Contribution	
		Percentage	Amount	Percentage	Amount
PS&E	\$13,029,000	83.23%	\$10,844,000	16.77%	\$2,185,000
ROW	\$10,212,000	100%	\$10,212,000	0%	\$0

SANBAG Contract No. C09145-01  
by and between  
San Bernardino County Transportation Authority  
and  
State of California Department of Transportation  
for  
I-215 HOV Gap Closure Project  
Preliminary Engineering (PE)

FOR ACCOUNTING PURPOSES ONLY						
<input checked="" type="checkbox"/> Payable <input type="checkbox"/> Receivable	Vendor Contract # <u>8-1435 A/1</u> Vendor ID _____	Retention: <input type="checkbox"/> Yes _____ % <input checked="" type="checkbox"/> No	<input type="checkbox"/> Original <input checked="" type="checkbox"/> Amendment			
Notes: Replaces C09145 in its entirety						
Original Contract: \$ <u>0</u>		Previous Amendments \$ <u>0</u>				
Contingency / Allowance Amount \$ <u>0</u>		Previous Amendments \$ <u>0</u>				
		Contingency / Allowance Total:				
		Current Amendment: \$ <u>11,000,000</u>				
		Current Amendment Contingency / Allowance: \$ <u>0</u>				
Contingency Amount requires specific authorization by Task Manager prior to release.						
<b>Contract TOTAL ►</b>			<b>\$ <u>11,000,000</u></b>			
* Funding sources remain as stated on this document unless and until amended by proper authority. Funding sources are those which are ultimately responsible for the expenditure.						
▼ Include funding allocation for the original contract or the amendment						
Main Task/Project	Level 1	Level 2	Cost Code/ Object	Grant ID/ Supplement	Funding Sources/ Fund Type (Measure I, STP, CMAQ, etc.)	Amounts for Contract Total or Current Amendment Amt
<u>0839</u>	<u>610</u>	<u>000</u>	<u>52001</u>	_____	<u>CMAQ</u>	<u>\$ 8,815,000</u>
<u>0839</u>	<u>610</u>	<u>000</u>	<u>52001</u>	_____	<u>RCTC</u>	<u>\$ 2,185,000</u>
Original Board Approved Contract Date: <u>5/12/10</u>				Contract Start: <u>5/12/10</u>		Contract End: <u>12/31/17</u>
New Amend. Approval (Board) Date: _____				Amend. Start: _____		Amend. End: _____
Allocate the <b>Total Contract Amount</b> or <b>Current Amendment</b> amount between <b>Approved Budget Authority</b> in the current year and <b>Future Fiscal Year(s) Unbudgeted Obligation</b> .						
<b>Approved Budget Authority ►</b>		Fiscal Year: <u>09/10</u> \$ <u>462,200</u>		<b>Future Fiscal Year(s) – Unbudgeted Obligation ►</b>		<u>\$ 10,537,800</u>
<input type="checkbox"/> Budget authority for this contract currently exists in Task No. <u>8391</u> (C-Task may be used here.).						
<input checked="" type="checkbox"/> A budget amendment is required. A Budget Amendment Request is attached.						

CONTRACT MANAGEMENT	
Check all applicable boxes:	
<input checked="" type="checkbox"/> Intergovernmental	<input type="checkbox"/> Private
<input type="checkbox"/> Disadvantaged Business Enterprise (DBE)	<input type="checkbox"/> Federal Funds
	<input type="checkbox"/> State/Local Funds
	<input type="checkbox"/> Underutilized DBE (UDBE)
Task Manager: <u>Garry Cohoe</u>	
Contract Manager: <u>Khalil Saba</u>	
 Task Manager Signature	<u>5/5/10</u> Date
 Contract Manager Signature	<u>5/5/10</u> Date
 Chief Financial Officer Signature	<u>5/7/10</u> Date

08-Riv-215-PM 43.9/45.3  
08-SBd-215-PM 0.0/5.0  
I-215/Bi County  
HOV Gap Closure  
EA 0M9400  
District Agreement No. 8-1435 A/1

## **REPLACEMENT AGREEMENT (AMENDMENT NO. 1)**

THIS AGREEMENT, ENTERED INTO EFFECTIVE ON \_\_\_\_\_, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE," and the

SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY, a public  
corporation of the State of California, referred to  
herein as "AUTHORITY."

### **RECITALS**

1. The parties hereto entered into Project Approval and Environmental Document (PA&ED) Agreement 08-1435 on May 29, 2009, said Agreement defining the terms and conditions to construction one High Occupancy Vehicle (HOV) lane in each direction on the Interstate 215 (I-215) between State Routes 60/91 Interchange in Riverside County and the I-215/Orange Show Road Interchange in San Bernardino County, referred to herein as "PROJECT."
2. Agreement No. 8-1435 stated that AUTHORITY prepared the PA&ED phase for PROJECT and was willing to fund one hundred percent (100%) of all PA&ED support costs using their local Measure funds in the amount of \$6,120,000.
3. The purpose of this Amendment No. 8-1435 A/1 is to include the Plans, Specifications, and Estimate (PS&E) phase of PROJECT and have the STATE perform all the PS&E activities for PROJECT.
4. It has also been determined that AUTHORITY desires to contribute Congestion Mitigation and Air Quality (CMAQ) funds in the amount of \$8,815,000 to be matched with State Transportation Improvement Program (STIP) funds in the amount of \$2,185,000 to fund the PS&E phase of PROJECT, as shown on Exhibit A, attached to and made a part of this Agreement.

5. For the purposes of this Agreement, the term PRELIMINARY ENGINEERING refers to the PA&ED and PS&E phases of PROJECT.
6. AUTHORITY is willing to be responsible for one hundred percent (100%) of all PRELIMINARY ENGINEERING support costs, except that the costs of STATE's Independent Quality Assurance (IQA) of PRELIMINARY ENGINEERING for the PA&ED phase, and STATE's costs incurred as the California Environmental Quality Act (CEQA) Lead Agency and National Environmental Policy Act (NEPA) Lead Agency, if applicable, in the review, comment, and approval, if appropriate, of the PROJECT environmental documentation prepared entirely by AUTHORITY, will be borne by STATE.
7. The terms of this Agreement shall supersede any inconsistent terms of any prior Memorandum of Understanding (MOU) or agreement relating to PROJECT.
8. PROJECT Landscape Maintenance, Right of Way, and Construction will be the subject of a separate future agreement or agreements.
9. This Agreement will define roles and responsibilities of the CEQA Lead Agency and CEQA Responsible Agency regarding environmental documentation, studies, and reports necessary for compliance with CEQA. This Agreement will also define roles and responsibilities for compliance with NEPA, if applicable.
10. STATE and AUTHORITY hereto now intend to define herein the revised terms and conditions under which PROJECT is to be developed, designed and financed pursuant to this Amendment, which replaces District Agreement No. 8-1435 in its entirety.

## **SECTION I**

### **AUTHORITY AGREES:**

1. To be responsible for one hundred percent (100%) of all PRELIMINARY ENGINEERING support costs of PROJECT except for costs of STATE's IQA and STATE's review, comment and approval if appropriate, of the PROJECT environmental documentation for CEQA, and NEPA if applicable. The PRELIMINARY ENGINEERING PROJECT cost is estimated to be \$17,120,000 as shown on Exhibit A, attached hereto and made a part of this Agreement. Cost increases for the PA&ED portion of PRELIMINARY ENGINEERING support will be paid by AUTHORITY using their local funds.
2. AUTHORITY desires to contribute CMAQ funds in the amount of \$8,815,000 to be matched with STIP funds in the amount of \$2,185,000 to use toward the PRELIMINARY ENGINEERING support costs for the PS&E phase of PROJECT. AUTHORITY agrees to be responsible for one hundred percent (100%) for the PS&E support portion of

PRELIMINARY ENGINEERING costs up to and not to exceed the amount of \$11,000,000. If cost increases in PS&E support costs become necessary, STATE and AUTHORITY agree to amend this Agreement.

3. To program, or cause to be programmed, all PROJECT funding in the appropriate Federal CMAQ and STIP documents, and to process all programming amendments thereto which may be required for any PROJECT funding changes.
4. STATE may encumber funds, as shown on Exhibit A, toward PROJECT.
5. In the event changes to the funds are necessary, to promptly notify STATE to determine if an amendment to this Agreement should be executed to reflect said changes.
6. All PROJECT work performed by AUTHORITY, or performed on AUTHORITY's behalf, shall be performed in accordance with all State and Federal laws, regulations, policies, procedures, and standards that STATE would normally follow. All such PROJECT work shall be submitted to STATE for STATE's review, comment, concurrence, and/or approval at appropriate stages of development.
7. All PROJECT work, except as set forth in this Agreement, is to be performed by AUTHORITY. Should AUTHORITY request that STATE perform any portion of PROJECT work, except as otherwise set forth in this Agreement, AUTHORITY shall first agree to reimburse STATE for such work pursuant to an amendment to this Agreement or a separate executed agreement.
8. To have a Project Study Report/Project Report (PSR/PR) prepared, at no cost to STATE, and to submit each to STATE for STATE's review, concurrence, and/or approval at appropriate stages of development. The PSR/PR for PROJECT shall be signed on behalf of AUTHORITY by a Civil Engineer registered in the State of California. AUTHORITY agrees to provide landscape plans prepared and signed by a licensed California Landscape Architect.
9. To permit STATE to monitor, participate, and oversee selection of personnel who will prepare the PSR/PR, prepare environmental documentation, including the investigative studies and technical environmental reports for PROJECT. AUTHORITY agrees to consider any request by STATE to avoid a contract award or to discontinue services of any personnel considered by STATE to be unqualified on the basis of credentials, professional expertise, failure to perform, and/or other pertinent criteria.
10. Personnel who prepare the preliminary engineering and environmental documentation, including investigative studies and technical environmental reports, shall be made available to STATE, at no cost to STATE, through completion of PROJECT construction to discuss problems which may arise during Right of Way, and Construction phases of the PROJECT, and/or to make design revisions for contract change orders.

11. AUTHORITY shall include a "conflict of interest" requirement in the PROJECT design consultant contract(s) that prohibits the design consultant from being employed or under contract to the future PROJECT construction contractor.
12. To make written application to STATE for necessary encroachment permits authorizing entry of AUTHORITY onto SHS right of way to perform required PRELIMINARY ENGINEERING work as more specifically defined elsewhere in this Agreement. AUTHORITY shall also require AUTHORITY's consultants and contractors to make written application to STATE for the same necessary encroachment permits.
13. To be responsible for, and to the STATE's satisfaction, the investigation of potential hazardous material sites within and outside existing SHS right of way that could impact PROJECT as part of performing any work pursuant to this Agreement. If AUTHORITY discovers hazardous material or contamination within the PROJECT study area during said investigation, AUTHORITY shall immediately notify STATE.
14. If AUTHORITY desires to have STATE advertise, award, and administer the construction contract for PROJECT, reimbursement to STATE for costs incurred by STATE to advertise, award, and administer the construction contract for PROJECT will be covered in a separate Cooperative Agreement.

## **SECTION II**

### **STATE AGREES:**

1. At no cost to AUTHORITY, to complete STATE's review, comment, and approval, if appropriate, as the CEQA Lead Agency and NEPA Lead Agency, if applicable, of the environmental documentation prepared entirely by AUTHORITY and to provide IQA of all AUTHORITY PRELIMINARY ENGINEERING work necessary for completion of the PSR/PR for PROJECT done by AUTHORITY, including, but not limited to, investigation of potential hazardous material sites undertaken by AUTHORITY or its designee, and provide prompt reviews, comments, concurrence, and/or approvals as appropriate, of submittals by AUTHORITY, while cooperating in timely processing of documents necessary for completion of the environmental documentation, PSR/PR for PROJECT.
2. To issue, upon proper application and at no cost to AUTHORITY, an encroachment permit required for work within SHS right of way. Any third party agent (including but not limited to contractors, consultants, and utility owners) must obtain an encroachment permit issued in their name, prior to performing any work within the SHS right of way. All third party agents may be subject to an encroachment permit fee assessment.
3. To provide PRELIMINARY ENGINEERING for the PS&E phase of PROJECT and all work incidentals thereto at one hundred percent (100%) AUTHORITY's responsibility



using CMAQ funds in the amount of \$8,815,000 to be matched with STIP funding source in the amount of \$2,185,000. The PROJECT estimated cost is \$17,120,000 as shown on EXHIBIT A, attached to and made a part of this Agreement. AUTHORITY agrees to be responsible for one hundred percent (100%) for the PS&E support portion of PRELIMINARY ENGINEERING costs up to and not to exceed the amount of \$11,000,000. If increases in PS&E support costs become necessary, STATE and AUTHORITY agree to amend this Agreement

4. To obtain AUTHORITY's approval should additional available funds be required and become available for PROJECT.
5. To account for all PROJECT costs to be paid for by AUTHORITY pursuant to this Agreement.
6. To submit a monthly progress report to AUTHORITY which describes the PRELIMINARY ENGINEERING performed and completed during the reporting period with pertinent data such as expenditures and percentage progress achieved to date, all in accordance with STATE's standard accounting practices.
7. To process all Federal authorizations, State allocations, and/or State applications for funds on behalf of AUTHORITY, as applicable under Federal and State law, for the contribution of funds toward PROJECT.
8. All PROJECT work performed by STATE on AUTHORITY's behalf, shall be performed in accordance with all State and Federal laws, regulations, policies, procedures, and standards that STATE would normally follow.
9. To identify and locate all utility facilities within the area of PROJECT as part of the design responsibility for PROJECT. All utility facilities not relocated or removed in advance of construction shall be identified on the PS&E for PROJECT.
10. If any existing utility facilities conflict with the construction of PROJECT or violate STATE's encroachment policy, STATE shall make all necessary arrangements with the owners of such facilities for their timely accommodation, protection, relocation, or removal.

The costs for the PROJECT's positive identification and location, protection, relocation, or removal of utility facilities whether inside or outside SHS right of way shall be determined in accordance with Federal and California laws and regulations, and STATE's policies and procedures, standards, practices, and applicable agreements including, but not limited to, Freeway Master Contracts.

11. To furnish evidence that arrangements have been made for the protection, relocation, or removal of all conflicting facilities within SHS right of way and that such work will be completed prior to award of the contract to construct PROJECT or as covered in the

PS&E for said contract. This evidence shall include a reference to all required SHS encroachment permits.

12. All aerial photography and photogrammetric mapping shall conform to STATE's current standards.

### **SECTION III**

#### **IT IS MUTUALLY AGREED:**

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority and the allocation of funds by the California Transportation Commission (CTC).
2. STATE invoices for support costs including all direct and applicable indirect costs. Applicable indirect costs are determined by the type of funds being used to pay for support. State and federal funds are subject to the Program Functional Rate. Local funds (Measure money, developer fees, special assessments, etc.) are subject to the Program Functional Rate and the Administration Rate. STATE establishes the Program Functional Rate and the Administration Rate annually according to State and federal regulations.
3. The parties to this Agreement understand and agree that STATE's IQA is defined as providing STATE policy and procedural guidance through to completion of the PROJECT preliminary engineering and PS&E phases administered by AUTHORITY. This guidance includes prompt reviews by STATE to assure that all work and products delivered or incorporated into the PROJECT by AUTHORITY conform with then existing STATE standards. IQA does not include any PROJECT related work deemed necessary to actually develop and deliver the PROJECT, nor does it involve any validation to verify and recheck any work performed by AUTHORITY and/or its consultants or contractors and no liability will be assignable to STATE, its officers and employees by AUTHORITY under the terms of this Agreement or by third parties by reason of STATE's IQA activities. All work performed by STATE that is not direct IQA shall be chargeable against PROJECT funds as a service for which STATE will invoice its actual costs and AUTHORITY will pay or authorize STATE to reimburse itself from then available PROJECT funds pursuant to an amendment to this Agreement authorizing such services to be performed by STATE.
4. The design and preparation of environmental documentation, including investigative studies and technical environmental reports, for PROJECT shall be performed in accordance with all applicable Federal and STATE standards and practices current as of the date of performance. Any exceptions to applicable design standards shall first be considered by STATE for approval via the processes outlined in STATE's Highway Design Manual and appropriate memoranda and design bulletins published by STATE.

In the event that STATE proposes and/or requires a change in design standards, implementation of new or revised design standards shall be done as part of the work on PROJECT in accordance with STATE's current Highway Design Manual Section 82.5, "Effective Date for Implementing Revisions to Design Standards." STATE shall consult with AUTHORITY in a timely manner regarding the effect of proposed and/or required changes on PROJECT.

5. STATE will be the CEQA Lead Agency and AUTHORITY will be a CEQA Responsible Agency. STATE will be the NEPA Lead Agency, if applicable. AUTHORITY will assess PROJECT impacts on the environment and AUTHORITY will prepare the appropriate level of environmental documentation and necessary associated supporting investigative studies and technical environmental reports in order to meet the requirements of CEQA and if applicable, NEPA. AUTHORITY will submit to STATE all investigative studies and technical environmental reports for STATE's review, comment, and approval. The environmental document and/or categorical exemption/exclusion determination, including the administrative draft, draft, administrative final, and final environmental documentation, as applicable, will require STATE's review, comment, and approval prior to public availability.

If, during preparation of preliminary engineering, preparation of the PS&E, performance of right of way activities, or performance of PROJECT construction, new information is obtained which requires the preparation of additional environmental documentation to comply with CEQA and if applicable, NEPA, this Agreement will be amended to include completion of those additional tasks by AUTHORITY.

6. AUTHORITY agrees to obtain, as a PROJECT cost, all necessary PROJECT permits, agreements, and/or approvals from appropriate regulatory agencies, unless the parties agree otherwise in writing. If STATE agrees in writing to obtain said PROJECT permits, agreements, and/or approvals, those said costs shall be a PROJECT cost.
7. AUTHORITY shall be fully responsible for complying with and implementing any and all environmental commitments set forth in the environmental documentation, permits, agreements, and/or approvals for PROJECT. The costs of said compliance and implementation shall be a PROJECT cost.
8. If there is a legal challenge to the environmental documentation, including investigative studies and/or technical environmental report(s), permits, agreements, and/or approval(s) for PROJECT, all legal costs associated with those said legal challenges shall be a PROJECT cost.
9. AUTHORITY, subject to STATE's prior review and approval, as a PROJECT cost, shall be responsible for preparing, submitting, publicizing and circulating all public notices related to the CEQA environmental process and if applicable, the NEPA environmental process, including, but not limited to, notice(s) of availability of the environmental document and/or determinations and notices of public hearings. Public notices shall

comply with all State and Federal laws, regulations, policies and procedures. STATE will work with the appropriate Federal agency to publish notices in the Federal Register, if applicable.

STATE, as a PROJECT cost, shall be responsible for overseeing the planning, scheduling and holding of all public meetings/hearings related to the CEQA environmental process and if applicable, the NEPA environmental process. AUTHORITY, to the satisfaction of STATE and subject to all of STATE's and FHWA's policies and procedures, shall be responsible for performing the planning, scheduling and details of holding all public meetings/hearings related to the CEQA environmental process and if applicable, the NEPA environmental process. STATE will participate as CEQA Lead Agency and if applicable, the NEPA Lead Agency, in all public meetings/hearings related to the CEQA environmental process and if applicable, the NEPA environmental process, for PROJECT. AUTHORITY shall provide STATE the opportunity to provide comments on any public meeting/hearing exhibits, handouts or other materials at least ten (10) days prior to any such public meetings/hearings. STATE maintains final editorial control of exhibits, handouts or other materials to be used at public meetings/hearings.

10. In the event AUTHORITY would like to hold separate and/or additional public meetings/hearings regarding the PROJECT, AUTHORITY must clarify in any meeting/hearing notices, exhibits, handouts or other materials that STATE is the CEQA Lead Agency and if applicable, the NEPA Lead Agency, and AUTHORITY is the CEQA Responsible Agency. Such notices, handouts and other materials shall also specify that public comments gathered at such meetings/hearings are not part of the CEQA and if applicable, NEPA, public review process. AUTHORITY shall provide STATE the opportunity to provide comments on any meeting/hearing exhibits, handouts or other materials at least ten (10) days prior to any such meetings/hearings. STATE maintains final editorial control of exhibits, handouts or other materials to be used at public meetings/hearings solely with respect to text or graphics that could lead to public confusion over CEQA and if applicable, NEPA, related roles and responsibilities.
11. That design activities shall not proceed beyond a 65% level of completion prior to completion of the NEPA and CEQA process.
12. All administrative reports, studies, materials, and documentation, including, but not limited to, all administrative drafts and administrative finals, relied upon, produced, created or utilized for PROJECT will be held in confidence pursuant to Government Code section 6254.5(e). The parties agree that said material will not be distributed, released or shared with any other organization, person or group other than the parties' employees, agents and consultants whose work requires that access without the prior written approval of the party with the authority to authorize said release and except as required or authorized by statute or pursuant to the terms of this Agreement.
13. The party that discovers hazardous material (HM) will immediately notify the other party(ies) to this Agreement.

HM-1 is defined as hazardous material (including but not limited to hazardous waste) that requires removal and disposal pursuant to federal or state law, whether it is disturbed by PROJECT or not.

HM-2 is defined as hazardous material (including but not limited to hazardous waste) that may require removal and disposal pursuant to federal or state law, only if disturbed by PROJECT.

14. STATE, independent of PROJECT, is responsible for any HM-1 found within existing SHS right of way. STATE will undertake HM-1 management activities with minimum impact to PROJECT schedule and will pay all costs associated with HM-1 management activities.

STATE, has no responsibility for management activities or costs associated with HM-1 found outside the existing SHS right of way. AUTHORITY, independent of PROJECT, is responsible for any HM-1 found within PROJECT limits outside existing SHS right of way. AUTHORITY will undertake, or cause to be undertaken, HM-1 management activities with minimum impact to PROJECT schedule, and AUTHORITY will pay, or cause to be paid, all costs associated with HM-1 management activities.

If HM-2 is found within the limits of PROJECT, the public agency responsible for advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM-2 management activities. Any management activity cost associated with HM-2 is a PROJECT construction cost.

15. Management activities related to either HM-1 or HM-2 include, without limitation, any necessary manifest requirements and designation of disposal facility.
16. STATE's acquisition of or acceptance of title to any property on which any hazardous material is found will proceed in accordance with STATE's policy on such acquisition.
17. A separate Cooperative Agreement or agreements will be required to address Landscape Maintenance, Right of Way, and cover responsibilities and funding for the Construction phase of PROJECT.
18. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the development, design, construction, operation, or maintenance of the SHS and public facilities different from the standard of care imposed by law.
19. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by AUTHORITY under or in connection with any work, authority or jurisdiction conferred upon

AUTHORITY under this Agreement. It is understood and agreed that, AUTHORITY will fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and or other theories or assertions of liability occurring by reason of anything done or omitted to be done by AUTHORITY under this Agreement.

20. Neither AUTHORITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE, under or in connection with any work, authority or jurisdiction conferred upon STATE under this Agreement. It is understood and agreed that, STATE will fully defend, indemnify and save harmless AUTHORITY and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
21. Prior to the commencement of any work pursuant to this Agreement, either STATE or AUTHORITY may terminate this Agreement by written notice to the other party.
22. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
23. This Agreement shall terminate upon satisfactory completion of all post-PROJECT construction obligations of AUTHORITY and the delivery of required PROJECT construction documents, with concurrence of STATE, or on December 31, 2017, whichever is earlier in time, except that the ownership, operation, maintenance, indemnification, environmental commitments, legal challenges, and claims articles shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any construction related or other claims arising out of PROJECT be asserted against one of the parties, the parties agree to extend the fixed termination date of this Agreement, until such time as the construction related or other claims are settled, dismissed or paid.

SIGNATURES ON FOLLOWING PAGE:

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

RANDELL H. IWASAKI  
Director of Transportation

SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY

By: \_\_\_\_\_  
RAYMOND W. WOLFE, PhD  
District Director

By: \_\_\_\_\_  
PAUL M. EATON, President  
Board of Directors

APPROVED AS TO FORM AND  
PROCEDURE:

Attest: \_\_\_\_\_  
VICKI WATSON  
Board Secretary

By: \_\_\_\_\_  
Attorney,  
Department of Transportation

By: \_\_\_\_\_  
JEAN-RENE BASLE  
AUTHORITY's Counsel

CERTIFIED AS TO FUNDS:

By: \_\_\_\_\_  
District Budget Manager

CERTIFIED AS TO FINANCIAL  
TERMS AND POLICIES:

By: \_\_\_\_\_  
Accounting Administrator

**EXHIBIT A****COST ESTIMATE**

	<b>FEDERAL</b>	<b>STATE</b>	<b>LOCAL</b>	
<b>PRELINANARY ENGINEERING</b>	<b>CMAQ</b>	<b>STIP MATCH</b>	<b>MEASURE</b>	<b>TOTAL</b>
<b>PA&amp;ED</b>	0%	0%	\$6,120,000.00	\$6,120,000.00
<b>PS&amp;E</b>	\$8,815,000.00	\$2,185,000.00		\$11,000,000.00
<b>TOTAL</b>	\$8,815,000.00	\$2,185,000.00	\$6,120,000.00	\$17,120,000.00



**C09145-1**  
**Caltrans Scope of Work (Page 1 of 2)**

<b><u>WBS</u></b>	<b><u>Description</u></b>
100	Project Management
100.15	Project Management during PS&E
185.05	Updated Project Information
185.10	Engineering and Photogrammetric Surveys
185.20	Engineering Reports
185.25	Right of Way Requirements Determination
185.30	Structure Site Plans
205.10	Permits
230.05	Draft Roadway Plans
230.10	Draft Highway Planting Plans
230.15	Draft Traffic Plans
230.25	Draft Utility Plans
230.30	Draft Drainage Plans
230.35	Draft Specifications
230.40	Draft PS&E Quantities and Estimates
230.60	Updated Project Information for PS&E Package
235.05	Environmental Mitigation
235.10	Hazardous Waste
240.50	Draft Structures PS&E
240.55	Foundation Plan
240.60	Hydraulics Report
240.65	Preliminary Foundation Report
240.75	Draft General Plans
240.80	Foundation Report
240.85	Draft Structures Plans
240.90	Draft Structures Special Provisions and Cost Estimates
250.50	Final Structures Project Review
250.55	Final Structures Plans
250.60	Final Structures SP and Cost Estimate
255.05	Circulate and Review District PS&E
255.10	Updated PS&E Package
255.15	Environmental Re-Evaluation
255.20	Final District PS&E
255.35	Construction Staking Package and Controls
255.40	RE file
255.45	NEPA Delegation
260.50	Project Submittal ready to process
260.60	Draft Contract Comments
260.70	Draft Contract Comments Response
260.80	Draft Contract Ready

**C09145-1**  
**Caltrans Scope of Work (Page 2 of 2)**

**WBS**

260.90  
265.50  
265.55  
265.60  
265.65  
265.70  
265.75

**Description**

Ready to List  
Contract Ready for Advertising  
Advertised Contract  
Bids Open  
Contract Award  
Executed and Approved Contract  
Independent Assurance

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority  
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

## *Minute Action*

AGENDA ITEM: 14

**Date:** May 12, 2010

**Subject:** Construction Management Services for the Ramona Avenue/Union Pacific Railroad (UPRR) Grade Separation Project

**Recommendation:\*** Approve Amendment No. 1 to Contract No. 07-088 with Caltrop Corporation in the amount of \$180,000, increasing the contract total amount from \$2,215,854.69 to \$2,395,854.69 and extending the duration of performance through August 2010.

**Background:** This action is an amendment to an existing professional services contract.

In December 2006, the Board executed a Cooperative Agreement No. 07-085 with the City of Montclair whereby SANBAG agreed to provide Construction Management and administration and Montclair agreed to provide up to \$16,571,000 in private, local and Federal funding for construction of the Ramona Avenue/Union Pacific Rail Road (UPRR) Grade Separation Project.

In March 2007, the Board approved Contract No. 07-088 with Caltrop Corporation (CALTROP) to provide Construction Management Services for the Ramona Avenue/Union Pacific Rail Road (UPRR) Grade Separation in the City of Montclair in the amount of \$ 2,215,854.69

On July 2, 2008, the Board approved Contract No. 08-004 with Riverside Construction Company including \$8,680,008 for construction of the project plus \$868,000 in contingencies for a total contract amount of \$9,548,008.

\*

*Approved  
Board of Directors*

*Date:* \_\_\_\_\_

*Moved:*

*Second:*

*In Favor:*

*Opposed:*

*Abstained:*

*Witnessed:* \_\_\_\_\_

In October 2008, SANBAG and Montclair amended their Cooperative Agreement No. 07-085 to reduce the City's financial obligation on the project from \$16,571,000 to \$11,763,862.69, reflecting SANBAG's actual contract liability on the Construction and Construction Management Services contracts, Nos. 08-004 and 07-088, respectively.

Several unanticipated utility conflicts were discovered during the course of construction that resulted in the need for the construction management firm to engage in extensive coordination efforts with the construction contractor and the affected utility purveyors. The subject contract amendment is requested to extend the duration of performance caused by project delays and to compensate CALTROP for the unanticipated utility coordination services.

Through February 2010, there was \$238,517 in available contingency remaining on construction contract No. 08-004. The City of Montclair has agreed to shift \$180,000 in funding from this available contingency amount to Contract No. 07-088 to pay the additional costs associated with utility coordination under the subject amendment. This budget shift results in a zero net change of total project cost.

***Financial Impact:*** This recommendation is consistent with the fiscal year 2009/2010 budget for Task 87210000.

***Reviewed By:*** This item was reviewed and recommended for approval (13-0-2; Abstained: Derry and Ovitt), by the Major Projects Committee on April 15, 2010. SANBAG Counsel has reviewed and approved these amendments as to form.

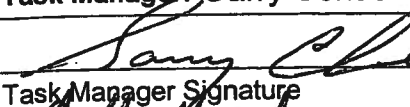
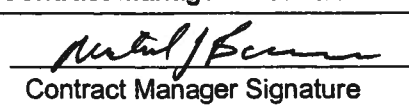

***Responsible Staff:*** Garry Cohoe, Director of Freeway Construction

SANBAG Contract No. 07-088-01  
by and between  
the San Bernardino County Transportation Authority  
and  
CALTROP Corporation  
for

Construction Management Services for Ramona Avenue/Union Pacific Railroad Grade  
Separation Project

FOR ACCOUNTING PURPOSES ONLY						
<input checked="" type="checkbox"/> Payable	Vendor Contract #	Retention:	<input type="checkbox"/> Original			
<input type="checkbox"/> Receivable	Vendor ID	<input type="checkbox"/> Yes ____ % <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Amendment			
Notes:						
Original Contract: <u>\$ 2,014,413.69</u>		Previous Amendments		<u>\$ 0</u>		
		Previous Amendments		<u>\$ 0</u>		
		Contingency / Allowance Total:				
Contingency / Allowance Amount <u>\$ 201,441</u>		Current Amendment:		<u>\$ 180,000</u>		
		Current Amendment Contingency / Allowance:		<u>\$ 0</u>		
Contingency Amount requires specific authorization by Task Manager prior to release.						
<b>Contract TOTAL ►</b>						<b><u>\$2,395,854.69</u></b>
* Funding sources remain as stated on this document unless and until amended by proper authority. Funding sources are those which are ultimately responsible for the expenditure.						
▼ Include funding allocation for the original contract or the amendment						
Main Task/ Project	Level 1	Level 2	Cost Code/ Object	Grant ID/ Supplement	Funding Sources/ Fund Type (Measure I, STP, CMAQ, etc.)	Amounts for Contract Total or Current Amndmnt Amt
<u>872</u>	<u>650</u>	<u>000</u>	<u>52005</u>	<u>52301</u>	<u>City of Montclair Funds</u>	<u>\$ 180,000</u>
_____	_____	_____	_____	_____	_____	<u>\$ _____</u>
Original Board Approved Contract Date: <u>3/7/07</u>				Contract Start: <u>3/7/07</u>		Contract End: <u>3/7/10</u>
New Amend. Approval (Board) Date: <u>5/12/10</u>				Amend. Start: <u>3/8/10</u>		Amend. End: <u>8/31/10</u>
Allocate the <b>Total Contract Amount</b> or <b>Current Amendment</b> amount between <b>Approved Budget Authority</b> in the current year and <b>Future Fiscal Year(s) Unbudgeted Obligation</b> .						
<b>Approved Budget Authority ►</b>		Fiscal Year: <u>09/10</u> <u>\$ 180,000</u>		<b>Future Fiscal Year(s) – Unbudgeted Obligation ►</b>		<u>\$ 0</u>
<input checked="" type="checkbox"/> Budget authority for this contract currently exists in Task No. <u>872</u> (C-Task may be used here.).						
<input type="checkbox"/> A budget amendment is required. A Budget Amendment Request is attached.						

CONTRACT MANAGEMENT	
Check all applicable boxes:	
<input type="checkbox"/> Intergovernmental	<input checked="" type="checkbox"/> Private
<input type="checkbox"/> Disadvantaged Business Enterprise (DBE)	<input type="checkbox"/> Underutilized DBE (UDBE)
<input type="checkbox"/> Federal Funds	<input checked="" type="checkbox"/> State/Local Funds

Task Manager: <u>Garry Cohoe</u>	Contract Manager: <u>Michael Barnum</u>
 Task Manager Signature	 Contract Manager Signature
<u>4/9/10</u> Date	<u>4/8/10</u> Date
 Chief Financial Officer Signature	<u>4/30/10</u> Date

**AMENDMENT NO. 1**  
**AGREEMENT BY AND BETWEEN**  
**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**  
**AND**  
**CALTROP CORPORATION**  
**FOR**  
**CONSTRUCTION MANAGEMENT SERVICES FOR RAMONA AVENUE/UNION**  
**PACIFIC RAILROAD GRADE SEPARATION PROJECT**

This AMENDMENT No. 1 to CONTRACT No. 07-088 entered into this 12th day of May, 2010 between the firm of Caltrop Corporation (hereafter called CONSULTANT) and the San Bernardino Associated Governments/San Bernardino County Transportation Authority (hereafter called AUTHORITY):

WITNESSETH,

WHEREAS, SANBAG, under SANBAG Contract 07-088 ("Contract"), has engaged the services of CONSULTANT to provide construction management services for the Ramona Avenue/Union Pacific Railroad Grade Separation Project ("Project"); and

WHEREAS, a delay to the start of construction has lengthened the schedule for the Project and issues encountered during construction have impacted the construction management scope. The parties desire to amend the Contract to increase the Contract not-to-exceed amount and to extend the duration of performance; and,

NOW THEREFORE, the parties mutually agree to amend the Contract as follows:

1. The Period of Performance by CONSULTANT under this Contract shall commence on March 7, 2007 and shall continue in effect for forty-one (41) months or until otherwise terminated or canceled as hereinafter directed, or unless extended by direction of AUTHORITY..
2. Article 3. The not-to-exceed amount of the Contract shall be increased by \$180,000.00. No additional contingency amount is included in this amendment. The amended total Contract not-to-exceed amount shall be \$2,395,854.69.

Except as amended by this Amendment No. 1, all other provisions of the Contract and any prior Amendments to the Contract remain in full force and effect.

IN WITNESS THEREOF, the authorized parties have below signed:

**San Bernardino County**  
**Transportation Authority**

**CALTROP Corporation**

By: \_\_\_\_\_  
Paul M. Eaton, President  
SANBAG Board of Directors

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Jean Rene Basle  
SANBAG Counsel

Date: \_\_\_\_\_

SANBAG Contract No. 08-004  
by and between  
the San Bernardino County Transportation Authority  
and  
Riverside Construction Company, Inc.  
for  
Construction of Ramona Avenue Grade Separation

FOR ACCOUNTING PURPOSES ONLY						
<input checked="" type="checkbox"/> Payable <input type="checkbox"/> Receivable	Vendor Contract # <u>TBD</u> Vendor ID _____	Retention: <input type="checkbox"/> Yes _____ % <input checked="" type="checkbox"/> No	<input type="checkbox"/> Original <input checked="" type="checkbox"/> Amendment			
Notes: This Contract Summary Sheet is included to direct SANBAG's finance department to shift available construction contingency from this Contract 08-004 to Contract 07-088. The terms of the construction contract remain unchanged.						
<b>Original Contract:</b> <b>\$ <u>8,680,008</u></b>  <b>Contingency / Allowance Amount</b> <b>\$ <u>868,000</u></b>	<b>Previous Amendments</b> <b>\$ <u>0</u></b> <b>Previous Amendments</b> <b>\$ <u>0</u></b> <b>Contingency / Allowance Total:</b> <b>Current Amendment:</b> <b>\$ <u>0</u></b> <b>Current Amendment Contingency / Allowance:</b> <b>\$ <u>(180,000)</u></b>					
Contingency Amount requires specific authorization by Task Manager prior to release.						
<b>Contract TOTAL ►</b>			<b>\$ <u>9,368,008</u></b>			
* Funding sources remain as stated on this document unless and until amended by proper authority. Funding sources are those which are ultimately responsible for the expenditure. ▼ Include funding allocation for the original contract or the amendment						
<b>Main Task/Project</b>	<b>Level 1</b>	<b>Level 2</b>	<b>Cost Code/ Object</b>	<b>Grant ID/ Supplement</b>	<b>Funding Sources/ Fund Type (Measure I, STP, CMAQ, etc.)</b>	<b>Amounts for Contract Total or Current Amndmnt Amt</b>
<u>872</u>	<u>650</u>	<u>000</u>	<u>53700</u>	<u>52301</u>	<u>City of Montclair Funds</u>	<b>\$ <u>(180,000)</u></b>
_____	_____	_____	_____	_____	_____	<b>\$ _____</b>
Original Board Approved Contract Date: <u>7/2/08</u>				Contract Start: <u>8/4/08</u>		Contract End: <u>N/A</u>
New Amend. Approval (Board) Date: <u>5/12/10</u>				Amend. Start: <u>5/12/10</u>		Amend. End: <u>N/A</u>
Allocate the Total Contract Amount or Current Amendment amount between Approved Budget Authority in the current year and Future Fiscal Year(s) Unbudgeted Obligation.						
<b>Approved Budget Authority ►</b>		Fiscal Year: <u>09/10</u> <b>\$ <u>(180,000)</u></b>		<b>Future Fiscal Year(s) – Unbudgeted Obligation ►</b>		<b>\$ <u>0</u></b>
<input checked="" type="checkbox"/> Budget authority for this contract currently exists in Task No. <u>872</u> (C-Task may be used here.). <input type="checkbox"/> A budget amendment is required. A Budget Amendment Request is attached.						

CONTRACT MANAGEMENT	
<b>Check all applicable boxes:</b>	
<input type="checkbox"/> Intergovernmental	<input checked="" type="checkbox"/> Private
<input type="checkbox"/> Disadvantaged Business Enterprise (DBE)	<input type="checkbox"/> Underutilized DBE (UDBE)
<input type="checkbox"/> Federal Funds	<input checked="" type="checkbox"/> State/Local Funds

<b>Task Manager:</b> Garry Cohoe	<b>Contract Manager:</b> Michael Barnum
Task Manager Signature	Contract Manager Signature
Date: <u>4/9/10</u>	Date: <u>4/9/10</u>
Chief Financial Officer Signature	Date: <u>4/15/10</u>



- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority  
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

## *Minute Action*

AGENDA ITEM: 15

**Date:** May 12, 2010

**Subject:** Continuing Cooperative Agreement with the Southern California Association of Governments (SCAG) for In-kind Services Commitment and Management of Federal Metropolitan Planning Funds

**Recommendation:**\* Approve Amendment No. 2 to SANBAG Contract C08-015 amending the Continuing Cooperative Agreement (SCAG No. 07-019-S1) with SCAG to address use of in-kind local match and SCAG Overall Work Program (OWP) funding of RivSan Travel Demand Model Improvements within San Bernardino County in the amount of \$55,000 in OWP and in-kind match of \$7,126 for a total of \$62,126 as shown in the financial impacts section.

**Background:** The Continuing Cooperative Agreement with SCAG is a year-to-year legal instrument for the management of SCAG Overall Work Program (OWP) funds that can remain unchanged except for scopes of work and annual funding amounts. This represents the basic funding agreement between SCAG and SANBAG for Fiscal Year 2009-2010.

The RivSan model improvement program is an ongoing multi-year effort to migrate the model to the TransCAD platform and upgrade input data and modeling components. This agreement serves as the instrument by which match is provided for federal funding of this project.

*Approved  
Board of Directors*

*Date:* \_\_\_\_\_

*Moved:*

*Second:*

*In Favor:*

*Opposed:*

*Abstained:*

*Witnessed:* \_\_\_\_\_

***Financial Impact:*** The Overall Work Program funds made available through this amendment to SCAG Agreement No. 07-019-S1 relates to funds previously budgeted by SCAG and for which in-kind services are provided by SANBAG in Task 20209000. Funds identified in the recommendation do not flow through or otherwise affect the SANBAG budget.


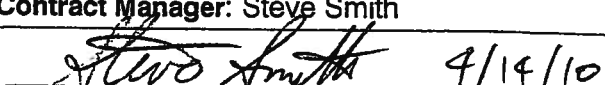
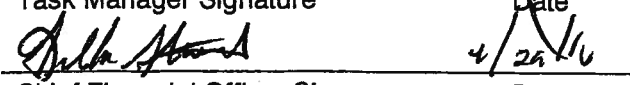
***Reviewed By:*** This item was reviewed and unanimously recommended for approval by the Plans and Programs Policy Committee on April 21, 2009.

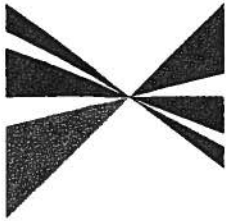
***Responsible Staff:*** Ty Schuiling, Director of Planning and Programming

SANBAG Contract No. **C08-015-02**  
by and between San Bernardino Associated Governments and  
Southern California Association of Governments  
for Management of Federal Metropolitan Planning (OWP) Funds

FOR ACCOUNTING PURPOSES ONLY						
<input type="checkbox"/> Payable	Vendor Contract # <u>07-019-S-3</u>		Retention: <input type="checkbox"/> Yes ____ % <input checked="" type="checkbox"/> No		<input type="checkbox"/> Original	
<input type="checkbox"/> Receivable	Vendor ID <u>SCAG</u>				<input checked="" type="checkbox"/> Amendment	
Notes:						
Original Contract:		\$ <u>0</u>	Previous Amendments		\$ <u>0</u>	
			Previous Amendments		\$ ____	
			Contingency / Allowance Total:			
Contingency / Allowance Amount		\$ ____	Current Amendment:		\$ <u>0</u>	
			Current Amendment Contingency / Allowance:		\$ ____	
Contingency Amount requires specific authorization by Task Manager prior to release.						
<b>Contract TOTAL ►</b>					<b>\$ <u>0</u></b>	
* Funding sources remain as stated on this document unless and until amended by proper authority. Funding sources are those which are ultimately responsible for the expenditure.						
▼ Include funding allocation for the original contract or the amendment						
Main Task/ Project	Level 1	Level 2	Cost Code/ Object	Grant ID/ Supplement	Funding Sources/ Fund Type (Measure I, STP, CMAQ, etc.)	Amounts for Contract Total or Current Amndmnt Amt
_____	_____	_____	_____	_____	_____	\$ ____
_____	_____	_____	_____	_____	_____	\$ ____
_____	_____	_____	_____	_____	_____	\$ ____
_____	_____	_____	_____	_____	_____	\$ ____
Original Board Approved Contract Date: _____				Contract Start: _____		Contract End: _____
New Amend. Approval (Board) Date: _____				Amend. Start: _____		Amend. End: _____
Allocate the <b>Total Contract Amount</b> or <b>Current Amendment</b> amount between <b>Approved Budget Authority</b> in the current year and <b>Future Fiscal Year(s) Unbudgeted Obligation</b> .						
<b>Approved Budget Authority ►</b>		Fiscal Year: _____ \$ ____		<b>Future Fiscal Year(s) – Unbudgeted Obligation ►</b>		\$ ____
<input checked="" type="checkbox"/> Budget authority for this contract currently exists in Task No. <u>20210000</u> (C-Task may be used.).						
<input type="checkbox"/> A budget amendment is required. A Budget Amendment Request is attached.						

CONTRACT MANAGEMENT	
<b>Check all applicable boxes:</b>	
<input checked="" type="checkbox"/> Intergovernmental	<input type="checkbox"/> Private
<input type="checkbox"/> Disadvantaged Business Enterprise (DBE)	<input type="checkbox"/> Underutilized DBE (UDBE)
<input type="checkbox"/> Federal Funds	<input type="checkbox"/> State/Local Funds

Task Manager: Ty Schuiling	Contract Manager: Steve Smith
 Task Manager Signature	 Contract Manager Signature
 Chief Financial Officer Signature	4/14/10 Date
4/25/10 Date	



**ASSOCIATION of  
GOVERNMENTS**

**Main Office**

818 West Seventh Street  
12th Floor  
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90017-3435

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**Officers**

President  
Jon Edney, El Centro  
  
First Vice President  
Larry McCallon, Highland  
  
Second Vice President  
Pam O'Connor, Santa Monica  
  
Immediate Past President  
Richard Dixon, Lake Forest

**Executive/Administration  
Committee Chair**

Jon Edney, El Centro

**Policy Committee Chairs**

Community, Economic and  
Human Development  
Carl Morehouse, Ventura

Energy & Environment  
Keith Hanks, Azusa

Transportation  
Mike Ten, South Pasadena

March 25, 2010

Paul Eaton, President  
San Bernardino Associated Governments  
1170 West Third Street, 2<sup>nd</sup> Floor  
San Bernardino, California 92410-1715

**RECEIVED**

APR 01 2010

**SAN BERNARDINO  
ASSOCIATED GOVTS**

**Subject:** Amendment 2 to San Bernardino Associated Governments' Continuing  
Cooperative Agreement (CCA) #07-019-S1 – FY 2009-2010

Dear Mr. Eaton:

This letter, if accepted by you, shall serve as Amendment 2 to the above referenced Agreement.

- A. "Exhibit A" is hereby amended by deleting it in its entirety and replacing it with a new "Exhibit A," attached hereto and incorporated herein by this reference.
- B. "Exhibit B" is hereby amended by deleting it in its entirety and replacing it with a new "Exhibit B," attached hereto and incorporated herein by this reference.
- C. Section 10 (Records Retention and Audits) is amended, in part, to revise paragraph "c" to read as follows:
  - c. The Subregion agrees to include all costs associated with this Agreement and any amendments thereto to be examined in the annual audit and in the schedule of activities to be examined under a single audit prepared by the Subregion in compliance with Office of Management and Budget Circular A-133.

**In accordance with Office of Management and Budget Circular A-133, Subregions that are required to file a Single Audit report shall provide SCAG with a copy of the report by March 31<sup>st</sup> of each year.**

- D. In accordance with Section 11, paragraph "e" of the Agreement, Subregion's Executive Director (or other designated authorized signatory) shall sign an annual certification and assurances form entitled "Affirmation of Subregion", attached hereto, which shall be provided to SCAG at the time this Amendment 2 is executed.

In all other respects, the terms and conditions of the CCA shall remain in full force and effect.

If you are in agreement with the terms of this Amendment 2, please sign and return both original copies of this Amendment 2 to the attention of Leyton Morgan, Manager of Contracts.

C0801502

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The effective date of Amendment 2 shall be July 1, 2009. Once the parties have signed the Amendment, one fully executed copy will be mailed to you.

Contractual matters and correspondence should be directed to Leyton Morgan, Manager of Contracts, at (213) 236-1982.

Southern California Association  
of Governments

San Bernardino  
Associated Governments

By \_\_\_\_\_  
WAYNE MOORE  
Chief Financial Officer

By \_\_\_\_\_  
Paul Eaton  
President

Date \_\_\_\_\_


Date \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
JOANNA AFRICA

Chief Counsel/Director of Legal Services

  
\_\_\_\_\_  
County Counsel  
JAN 26 2006

**EXHIBIT A**

**Subregional Scope of Work**

**San Bernardino Associated Governments (SANBAG)**  
**Scope of Work and Budget**  
**RIVSAN Model Improvement**  
**(10-010.SCG00132.03)**

**Description of In-Kind Match for SCAG Consultant Project**

SANBAG will provide technical assistance to account for the 11.47% in-kind match required for this project. The in-kind match shall be \$7,126: \$55,000 budget divided by 88.53% (Federal Allocation) multiplied by 11.47% (Required Match).

Technical assistance shall be provided through the following work tasks:

<u>Work Tasks:</u>	<u>Budget</u>
Assist with review/update of all model inputs including zones, SED, and networks.	\$2,886
Review application of the new subregional modeling methodology to the Inland area.	\$1,443
Assist with and review model validation to insure the model is performing properly.	\$2,165
Act as subregional project manager, coordinating with SCAG for review of products.	\$ 722

**EXHIBIT B**

**Subregional Budget**



## Subregional Budget

Southern California Association of Governments  
Fiscal Year 2009-2010 Subregional Budget

Subregion: **SAN BERNARDINO ASSOCIATED GOVERNMENTS**

**CHART 1 - Subregional Staff Projects**

WBS	Program Name	Description	SCAG Project Manager	Federal Amount	In-Kind Match	Cash Match	Total
		<b>Total Subregional Staff</b>					

**CHART 2 - SCAG Consultant Projects**

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WBS	Program Name	Description	SCAG Project Manager	Federal Amount	In-Kind Match	Cash Match	Total
10-010.SCG00132.03 (Formerly 08-070.SBGS1)	RivSan Model Improvement - SANBAG	Modeling	M. Ainsworth	55,000	7,126	0	62,126
		<b>Total Subregional Consultant</b>		<b>55,000</b>	<b>7,126</b>	<b>0</b>	<b>62,126</b>

**Grand Totals:**

Amount	In-Kind Match	Cash Match	Total
55,000	7,126	0	62,126